ICC Staff Reply Comments, May 29, 2013
Post-Workshop Section 16-111.5B Energy Efficiency Questions

I. *ICC Staff Replies to Parties' Initial Responses to the Post-Workshop Section 16-111.5B Energy Efficiency Questions are provided in the first section below. Each ICC Staff Reply is directly below each Party Response in which it is replying to.*
II. *Post-Workshop Section 16-111.5B Energy Efficiency Questions are provided in Appendix A.*
III. *Sections 8-103 and 16-111.5B Energy Efficiency Timeline is provided in Appendix B.*
IV. *Statutory Provisions cited throughout comments are provided in Appendix C.*

I. ICC Staff Reply Comments (May 29, 2013)

A. Coordination of Energy Efficiency Programs

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Is it feasible for the energy efficiency ("EE") programs and measures procured by the Illinois Power Agency ("IPA") pursuant to Section 16-111.5B to include expansions of Section 8-103 EE programs and measures? If yes, please explain how, describe the benefits and costs of doing so, and explain whether expansions of Section 8-103 EE programs and measures should be included in IPA procurements of EE pursuant to Section 16-111.5B.
CUB Response: Yes. While the IPA procurement of EE provides an expanded opportunity for third-party programs, expansion of the utility's statutory EE programs (programs pursuant to the Energy Efficiency Portfolio Standard or "EEPS") is required by the PUA where that expansion is cost-effective.
ICC Staff Reply: Staff disagrees in part with CUB's initial response. Section 16-111.5B(a)(2) requires an "*assessment of opportunities* to expand" the Section 8-103 EE programs where that expansion is cost-effective. In other words, it does not appear to Staff that expansion of each of the utility's Section 8-103 EE programs is necessarily *required* under Section 16-111.5B, rather procurement plans must include an assessment of any opportunities to expand the Section 8-103 EE programs. Further, given Section 16-111.5B's use of the term "or", rather than "and", Staff does not believe expansion of the utility's Section 8-103 EE programs is necessarily required every year under Section 16-111.5B. Section 16-111.5B(a)(3)(C) states that the assessment must include: "[i]dentification of new *or expanded cost-effective energy efficiency programs or measures* that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103 of this Act [.]" 220 ILCS 5/16-111.5B(a)(3)(C). *(Emphasis added).*
NRDC/AG Response: The energy efficiency procurement provisions of Section 16-111.5B of the Public Utilities Act ("the Act") specifically contemplate the Utilities' including expansions of Section 8-103 programs as a part of the annual energy efficiency procurement presentation provided to the IPA. Section 16-111.5B(a) states, for example: "The procurement plan components described in subsection (b) of Section 16-111.5 *shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act* or to

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implement additional cost-effective energy efficiency programs or measures." 220 ILCS 5/16-111.5B(a)(2) (emphasis added). Section 16-111.5B(a)(3)(C) also specifically references the inclusion of expanded Section 8-103 efficiency programs as a part of the efficiency potential assessment provided to the IPA: *"…*each Illinois utility…shall annually provide to the Illinois Power Agency…an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. The assessment shall include*…(C) Identification of new **or expanded** cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103…"* 220 ILCS 5/16-111.5B(a)(3)(C) (emphasis added). Both the NRDC and the Office of the Attorney General ("OAG") believe inclusion of additional savings from Section 8-103 programs is necessary to achieve the objective of Section 16-111.5B to capture all cost-effective efficiency potential not being acquired from residential and small business customers through Section 8-103 programs. Because the utilities' Section 8-103 program portfolios are both budget-constrained and designed to offer a range of energy saving opportunities to all customers, few if any of their Section 8-103 programs are intended to capture all of the cost-effective efficiency potential from the markets that they target. Consider, for example, a utility that needs to spend an average of $0.20 per first year kWh saved to meet an overall portfolio savings target within its budget constraint. If one of the programs offered by that utility could cost-effectively generate 50,000 MWh in first year savings at a utility cost of $0.20 per first year kWh saved ($10 million total) or 100,000 MWh in first year savings at a utility cost of $0.35 per first year kWh saved ($35 million total), it is likely to propose to acquire only the first 50,000 MWh in its Section 8-103 portfolio, even if the full 100,000 MWh of annual savings was cost-effective. This is because the utility is likely to be able to identify additional savings it can acquire from other programs at a lower incremental cost than the additional savings from this program can provide. Put another way, the budget constraint that the Section 8-103(d) cost cap imposes leads to some "cream-skimming" by the utilities, forcing them to try to acquire the cheapest savings while leaving other cost-effective savings -- i.e., savings that are still less expensive than electric supply, and often much less expensive on a life-cycle cost basis – "on the table." It is those other savings that we believe Section 16-111.5B was intended to acquire. With respect to the feasibility of expanding Section 8-103 programs, the utilities have already demonstrated that such expansions are possible. In 2012, both Ameren and Com Ed identified a number of different 8-103 program expansions that would generate additional cost-effective savings, were included by the IPA in its proposed procurement plan and were approved by the ICC. The methodology for pursuing program expansions is quite simple. First, the utilities must assess the extent to which their Section 8-103 programs could be expanded to generate additional cost-effective savings. Second, they must estimate the additional financial/budgetary resources that would be needed to acquire those additional savings. In the example provided above, the utility

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would indicate to the IPA that it could acquire an additional 50,000 MWh in first year savings at an additional cost of $25 million.[1] Finally, it must assess whether the additional savings are cost-effective under the TRC test which is the yardstick Section 16-111.5B requires be used to determine whether the IPA should procure the savings. Expansions of existing programs that are already shown to be TRC cost-effective will almost always be TRC cost-effective themselves because they usually enable fixed program administrative costs to be spread over a larger volume of energy savings. That said, it is important to acknowledge that there is currently a timing problem with the need to consider expansions of the Section 8-103 programs that will be implemented in Program Year (("PY") 7, which runs June 2014 to May 2015, in the IPA procurement of savings for the same year. Specifically, the utilities must submit to the IPA by July 2013 their assessment of the additional savings the IPA could cost-effectively acquire, even though they will not yet have filed, let alone received ICC approval of, their next proposed, three-year Section 8-103 plan (covering PY7 through PY9). The IPA is also expected to file its procurement plan in September with ICC approval expected before the end of the year, also likely before any ICC decision on the utilities' Section 8-103 plans. In other words, it would be difficult for the utilities to definitely identify expansions of Section 8-103 programs for PY7 that the IPA could procure when they do not know for certain what the Section 8-103 programs would be or how deeply into the market each of them would go (i.e. how much savings each would acquire). Unless filing schedules are changed, this problem will likely exist every three years during the years in which the utilities are filing new Section 8-103 portfolios. However, there should not be an issue with exploring expansions of existing Section 8-103 programs in the other two years. To address that problem in the future (it is probably too late to do so for the Section 8-103 plans the utilities are planning to file his year), NRDC and the OAG recommend that the Commission present recommendations to the General Assembly that would modify the statutory filing timelines included in Sections 8-103, 16-111.5 and 16-111.5B of the Act to better align the schedule of the required Section 8-103 and IPA procurement filings. Moreover, NRDC and the OAG recommend that the ICC require that the next utility 8-103 portfolios (i.e. those covering PY10 through PY12 to be filed in 2016) comprehensively address all cost-effective efficiency potential in the residential and small commercial markets. Assuming filing deadlines could be coordinated, NRDC and the OAG recommend ,beginning in 2016, that the Section 8-103 filings and IPA procurement filings be merged, with a portion of the budget needed to capture all the cost-effective residential and small commercial savings coming from Section 8-103 requirements and the balance from IPA. As suggested below, this would create a single combined savings target. There could then be

[1] Note that throughout this example we refer to cost per first year kWh saved because that is the way the utilities' Section 8-103 savings targets are conveyed. Needless to say, when assessing the cost-effectiveness of efficiency programs, one must consider the life of the savings as well as how much is produced each year. In this example, the levelized life-cycle utility cost per kWh of the additional 50,000 MWh savings would be about $0.04 cents/kWh if the savings had a 20-year life and one assumed a 5% real discount rate. However, even that calculation is not the most important. Both section 8-103 and 16.111.5B efficiency investments are required to be screened using the TRC test. That test looks at the societal cost and considers not only the benefits of reduced energy consumption but also the benefits of avoided peak capacity, avoided transmission and distribution system investments, avoided marginal line losses, avoided carbon emissions and other benefits.

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"supplemental" IPA filings made during each of the intervening "off years" to add additional savings opportunities identified after the larger 3-year joint filings are made.
ICC Staff Reply: Staff concurs with the NRDC/AG that the EE procurement provisions of Section 16-111.5B of the PUA specifically contemplate the utilities including expansions of Section 8-103 EE programs as a part of the annual EE procurement presentation provided to the IPA. Staff concurs with the NRDC/AG that there is currently a timing problem with the need to consider expansions of the Section 8-103 EE programs that will be implemented in PY7, which runs June 2014 to May 2015. Staff also concurs with the NRDC/AG that it is probably too late to address this timing problem this year for the Section 8-103 EE plans the utilities are planning to file this year. As is customary, Staff takes no position on the legislative recommendations. Staff notes that absent a legislative change to Sections 8-103 and 8-104 with respect to filing deadlines, it appears the Commission does have authority to modify certain deadlines within Sections 16-111.5 and 16-111.5B that would ultimately impact the timeline for the procurement plan docket. *See, 220 ILCS 5/16-111.5(d)(1)-(3); 220 ILCS 5/16-111.5B(a)(3).* However, Staff is unable to determine a workable schedule for the procurement plan docket that works around the existing Section 8-103 filing deadlines. That being said, Staff does see a possible way for the Section 8-103 filings to better coordinate with the procurement plan filings. To accomplish the objective of aligning EE filing timelines across Sections 8-103 and 16-111.5B, the utilities and DCEO could agree to file their Section 8-103 EE plans with the Commission in July (e.g., July 1, 2016 and every three years thereafter). Staff believes this option is feasible given the existing statutes since Section 8-103(f) only specifies a date by which the utilities *must file* their 3-year EE plans. In other words, there is nothing in Section 8-103(f) that prohibits a utility from filing its 3-year EE plans with the Commission prior to September 1st. Section 8-103(f) specifies that the Commission must approve/disapprove an EE plan within 5-months of a utility *filing* the EE plan. *See, 220 ILCS 5/8-103(f).* Thus, if the utilities and DCEO committed to filing the Section 8-103 EE plans with the Commission by July 1, 2016, then this would mean the pursuant to Section 8-103(f) that the Commission would approve/disapprove the Section 8-103 EE plans likely by a late-November Commission Bench Session, which could potentially be before Briefs on Exception and Reply Briefs on Exception are filed in the procurement plan docket (based on historical procurement plan filing timelines) and before the Commission enters its order in the procurement plan docket. Staff understands one of the NRDC/AG's proposals to be that "the utilities should submit a plan that (1) identifies all cost-effective potential in their 8-103 filing, (2) identifies what parts of it will be addressed with the 8-103 budget and what parts they recommended to IPA be addressed by IPA procurement; and (3) that the utilities do this assessment early enough so that they can ensure that what they present to the IPA for its filing has been considered in the context of the assessment of how to capture everything that is cost-effective (i.e. points 1 and 2)." Staff generally concurs with the NRDC/AG's proposal.

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1.1
Should the Section 16-111.5B EE programs be limited to new or different EE programs than those included in a utility's Section 8-103 EE portfolio? What are the benefits and costs of such an approach?
CUB Response: The Act states that utilities should provide the IPA with an "assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures." 220 ILCS 5/16-111.5B. The utilities must identify "new or expanded cost-effective energy efficiency programs or measures." *Id.* Taken together, this means utilities must include expansion of the statutory EE programs under Section 8-103 when expansion of those programs would be cost-effective. CUB anticipates that for many programs, the IPA procurement provides an opportunity for utilities to cost-effectively expand existing 8-103 portfolio programs. However, it may not be cost-effective to expand certain 8-103 portfolio programs if there is a high cost associated with acquiring additional customers. As such, CUB agrees with ComEd that there is no need for requirements around which programs should or shouldn't be expanded. The Act is clear that if the expansion is cost-effective, it should be included in the IPA's procurement. Ameren speculates that it is only feasible for the IPA procurement to include expansion of 8-103 programs "only if those expanded programs can be managed with the same rules and construct as 8-103 programs (flexibility, merged budget, etc). Ameren Initial Comments at 1. Ameren explains that it is "not feasible for IPA programs to include expansion of 8-103 programs for the first year of any Plan since the 8-103 programs for the submitted year has not been determined. For example this year we are submitting IPA programs for Y7 (2014) on July 15, 2013 which is the first year of the next Plan which will not be determined until February 2014." *Id.* CUB understands most parties to be in agreement that where possible, the evaluation, measurement and verification of both EEPS programs and programs procured pursuant to Section 16-111.5B should be coordinated, allowing for efficiencies in program management. However, due to the distinct contracting procedures used in each case, CUB believes that program budgets cannot be combined. Utilities cannot manage programs procured pursuant to the IPA's procurement in the same way as an EEPS portfolio since contracts for the IPA procurement are intended as an alternative to traditional procurement of energy supply, leading to contracts with longer terms, pay-for-performance aspects and less cumbersome evaluation protocols.

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ICC Staff Reply: Staff concurs with CUB's initial response that there is no need for requirements around which programs should or shouldn't be expanded. Staff does not concur with CUB's initial response that there are necessarily less cumbersome evaluation protocols for the Section 16-111.5B EE programs. For example, to the extent a Section 16-111.5B EE program is very large in terms of cost and savings with great potential to expand in the future, a full evaluation of the EE program may be warranted, especially given the Section 16-111.5B EE programs are not subject to the Section 8-103(d) spending limitations.

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Should expansion of existing Section 8-103 EE programs under Section 16-111.5B also include expansion of DCEO's Section 8-103 EE programs? If yes, please explain how and describe the benefits and costs of such an approach.
CUB Response: Per the Act, the Department of Commerce and Economic Opportunity ("DCEO") offers energy efficiency programs to low-income residential customers under the 8-103 portfolios. These programs, if expanded through the 16-111.5B procurement, would provide additional economic and societal benefits to low-income customers. ComEd and Ameren have both offered to work with DCEO on future bids for expanding low-income programs under the 16-111.5B procurement, and CUB is supportive of those plans.
ICC Staff Reply: Staff generally concurs with CUB's initial response.
NRDC/AG Response: Yes. The intent of 16.111.5B is to capture all cost-effective, residential and small non-residential electric efficiency resources not being captured by Section 8-103 programs. Further, as noted in the response to the first question above, Section 16.111.5B explicitly contemplates expansion of Section 8-103 programs where such expansions can provide additional cost-effective savings. DCEO's programs target, in part, both residential and some small non-residential customers. They are also part of the Section 8-103 portfolios. As long as the potential DCEO-sector efficiency programs or measures represent programs that are "offered to all retail customers whose electric service has not been declared competitive under Section 16-113 of (the) Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility," they should be included in the assessment delivered to the IPA. 220 ILCS 5/16-111.5B(a)(3)(C). The full extent of the benefits and costs cannot be known until an analysis of the opportunities is conducted. However, because any expansion is required to be cost-effective, the benefits will – by definition – outweigh the costs.
ICC Staff Reply: Staff generally concurs with the NRDC/AG's initial response.

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3. Given the existing EE statutes, should the Commission treat Sections 8-103 (EEPS) and 16-111.5B (IPA) EE portfolios as separate portfolios (e.g., separate EE goals, separate budgets, separate sets of standards) or as a combined portfolio (e.g., single EE goal, single budget, single set of harmonized standards)? Please explain which approach (i.e., separate or combined EE portfolios) is preferred and provide rationale. **3.1. How would the preferred approach (i.e., separate or combined EE portfolios) actually work in practice (in terms of EE evaluation, tracking, reporting, portfolio administration, goals, banking, flexibility, merged or separate budget, and other overlap with Section 8-103)? Please be very specific.** **3.2. Under what circumstances (if any) could you support the alternative approach (i.e., separate or combined EE portfolios), and how would the alternative approach actually work in practice (in terms of EE evaluation, tracking, reporting, portfolio administration, goals, banking, flexibility, merged or separate budget, and other overlap with Section 8-103)? Please be specific.**

CUB Response: (Q3.) While 16-111.5B programs may include the expansion of existing programs under the 8-103 portfolios, the Commission should not treat the two sets of programs as a combined portfolio, nor should the Commission treat the 16-111.5B programs as a portfolio at all. There are no annual savings goals for the 16-111.5B programs, nor are utilities directed to manage 16-111.5B programs as though they were part of a utility administered portfolio. After the Commission approves the procurement of additional energy efficiency, the Act directs it to "reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency." In short, the Act treats the 16-111.5B programs as supply. To the extent practicable, contracts for 16-111.5B programs should be written as supply contracts. CUB supports ComEd's recommendation to report both sets of programs' goals and budgets together to show the impact of both sets of programs' impact, as well a to apply standards such as the TRM to both sets of programs. ComEd Initial Comments at 1.

CUB disagrees with Ameren's statement that a "harmonized set of standards" is the "only way to accommodate programs that are expanded and become both an 8-103 and IPA program." Ameren Initial Comments at 2 While again it is not clear exactly what "harmonized standards" Ameren is looking for, it is clear that Ameren wishes any kWh purchased through Section 111.5B program to first count towards Section 8-103 statutory goals. *Id.* EE procured through the IPA's process is intended to offset the purchase of energy supply and not allow utilities greater ease at meeting the statutory targets of the Section 8-103 programs. Ameren's proposal would not maximize savings from cost-effective energy efficiency programs, and is therefore not in the interest of ratepayers.

(Q3.1.) Section 16-111.5B programs will have some consistencies with the Section 8-103 portfolios. CUB anticipates that EMV of the IPA-procured EE programs will be conducted by the same evaluators which conduct the EEPS evaluations. The only other procedural overlap is

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in the annual ICC reconciliation of costs for the riders utilities use to recover the costs of both sets of EEPS programs.

(Q3.2.) CUB would not support the alternative approach. EE programs procured through the IPA process are not re-evaluated for cost-effectiveness once they are approved by the ICC in a procurement plan. CUB understands that many, if not all, IPA-procured programs are structured around a pay for performance contract, so there is no risk of expending funds unwisely. Like traditional generation sources, suppliers – in this case, EE vendors, will cover the cost of supply needed to make up the difference.

Ameren states that a "separate portfolio" approach would "result in no expansion of Section 8-103 programs." Ameren Initial Comments at 2. Ameren should reconsider this approach and adopt a position similar to that of earlier workshop discussions where utilities discussed expanding Section 8-103 programs by separating budgets and savings, such as by running a specialty lighting program under the IPA, and a standard lighting program under the 8-103 programs. However, it seems that even if that approach were adopted, Ameren believes it should have the same amount of flexibility to manage programs that the utility has for the 8-103 programs – e.g. the right to move funds amongst programs and the right to discontinue programs *Id*. CUB disagrees. The Act is clear that the 111.5B programs should include both expanded utility and third party vendor programs. Since the Section 16-111.5 programs are procured as if supply, allowing for mid-contract re-evaluation, re-negotiation or termination would create uncertainty for vendors and reduce bids from third party vendors.

ICC Staff Reply: (Q3.) Staff concurs with CUB's initial response that the Commission should not treat Sections 8-103 and 16-111.5B EE portfolios as a combined portfolio.

Staff does not concur with CUB's initial response that there are no annual savings goals for the Section 16-111.5B EE programs. Section 16-111.5B(a)(5) clearly states that when the Commission approves the programs, it is also approving the "annual energy savings goal".

With respect to CUB's recommendation that "[t]o the extent practicable, contracts for 16-111.5B programs should be written as supply contracts." Staff is unsure of what components of supply contracts CUB is requesting the Section 16-111.5B EE programs mirror.

(Q3.1.) Staff generally concurs with CUB's initial response but notes there may be other procedural overlap if the evaluations are filed in the savings docket as recommended in Staff's initial response.

(Q3.2.) Staff does not concur in CUB's initial response that there is no risk of expending funds unwisely with a "pay-for-performance" contract.

NRDC/AG Response: The programs should be managed as a single portfolio to the greatest extent possible to enable the most efficient and effective administration. The portfolio would necessarily include (1) purely Section 8-103 programs; (2) expanded Section 8-103 programs that are funded in part through Section 8-103 funds and in part through the IPA procurement and (3) new programs that were identified through the competitive solicitation and are funded entirely through the IPA

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procurement process. NRDC and the OAG recommend that the ICC give the utilities two options for such integrated management. Each utility would be able to choose the option it prefers.

Option A

The first option – which NRDC considers to be the best option – would be to create a combined energy savings goal for each utility, including the savings that could be acquired through both the Section 8-103 budget and whatever additional funds are made available through the Section 16-111.5B expansions and programs. In a way, this would be analogous to treating the funds for IPA procurement as an additional source of funding that is not covered by the Section 8-103 spending caps, just as, for example, Com Ed's revenue from selling peak demand savings into the PJM capacity market is treated as an exogenous source of revenue that can be reinvested in additional efficiency savings. This treatment would enable the utilities to better achieve statutory savings targets without going over the statutory spending cap. However, this approach of combining savings into a single savings target would only be appropriate if the utilities are held accountable for meeting the *aggregate* savings target in the same way they are held accountable for meeting the Section 8-103 target. If they are held accountable only for meeting the Section 8-103 target, then they have no incentive to really meet the aggregate target and the IPA funds simply become a means of reducing – if not totally eliminating – the risk of not meeting the lower Section 8-103 targets. Under this option, the rules for the merged portfolio would be as follows:

• **Evaluation:** The evaluation of IPA efficiency programs should be conducted in the same manner as for Section 8-103 programs today, though it would likely be appropriate to revisit the question as to whether every program should be evaluated at least once every three years. For example, the benefits of evaluation of very small programs, which seem potentially quite common under the IPA procurement, may not outweigh the costs.
• **Tracking and Reporting:** The tracking and reporting of IPA programs should be fully integrated with the tracking and reporting of Section 8-103 programs.
• **Portfolio Administration:** Administration of the portfolios should be fully integrated.
• **Goals and Savings Allocations**: All savings would be applied to the same single savings goal. There would be no need to allocate them to each source of funding.
• **Banking**: There would be one set of banking rules that would apply to the entire portfolio.
• **Flexibility**: Flexibility would be available to move budget dollars among programs when justified and modify where savings are acquired (relative to plans) within the entire program portfolio, provided that every effort still is made to acquire all cost-effective savings from residential and small business customers, and that all of the funds coming from the IPA are spent on programs targeting such customers.

Notwithstanding these views, NRDC/OAG acknowledge that there are no specific provisions in Section 16-111.5B that designate specific savings goals or penalties for failure to achieve forecasted energy savings, unlike Section 8-103 provisions. However, ensuring accountability for forecasted energy savings pursuant to Section 16-111.5B is essential to achievement of cost-effective energy efficiency and overall reduced energy usage.

NRDC/OAG suggest that discussion as to how such accountability can be attained should continue through the SAG process.

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Option B

The second option would essentially have two different savings targets – one for Section 8-103 programs and another for the Section 16-111.5B programs and program expansions. Under this option, the utilities would have the same accountability that they currently have for meeting Section 8-103 targets, but they would not face any penalties for not achieving the savings forecasted for the IPA procurement. Under that paradigm, we suggest the following:

• **Evaluation**: The evaluation of IPA programs should be conducted in the same manner as for Section 8-103 programs today, though as discussed below in response to Question 5, not all IPA programs should necessarily be evaluated. Expanded programs would receive one evaluation.

• **Tracking and Reporting**: The tracking and reporting of IPA and Section 8-103 programs should be fully integrated.

• **Portfolio Administration**: The administration of IPA and Section 8-103 programs should be fully integrated.

• **Goals and Savings Allocations**: A hybrid approach to calculating goals and savings is necessary under this option. Savings from expanded Section 8-103 programs should be allocated in proportion to the planned savings from the "base" Section 8-103 program and the IPA expansion. For example, if a program was forecast to achieve 100,000 MWh under Section 8-103 and forecast to achieve an additional 50,000 MWh as a result of an additional investment through the IPA, then two-thirds of all of the savings actually achieved would be allocated to the Section 8-103 portfolio and one-third to the IPA. For programs that are unique to either the Section 8-103 portfolio or the IPA portfolio, savings would count solely towards the respective savings goals for each segment.

• **Banking**: Banking rules for IPA procurement would be the same as for Section 8-103 programs, but only for the duration of contracts put in place. In other words, there would be no banking for programs accepted for one year of implementation. Banking would be permitted for programs accepted for 2 or 3 years.

• **Flexibility**: Flexibility would be available to move budget dollars among programs when justified and modify where savings are acquired (relative to plans) within the Section 8-103 program portfolio and within the IPA program portfolio, but not between Section 8-103 and IPA portfolios.

ICC Staff Reply: The NRDC/AG's initial response proposes two avenues for which the utilities could choose from: Option A and Option B.

Staff does not concur in the NRDC/AG's statement: "In a way, this would be analogous to treating the funds for IPA procurement as an additional source of funding that is not covered by the Section 8-103 spending caps, just as, for example, Com Ed's revenue from selling peak demand savings into the PJM capacity market is treated as an exogenous source of revenue that can be reinvested in additional efficiency savings." PJM revenues are treated as a reimbursement to customers and not an extra charge imposed upon customers as the funding for the Section 16-111.5B EE programs are; these are not analogous.

Option A: Given the existing law, Staff does not concur with the NRDC/AG's Option A to combine Sections 8-103 and 16-111.5B EE portfolios.

Option B: Staff is open to discussion of the NRDC/AG's Option B at the workshop. Staff has questions with the savings allocation proposal for expanded EE programs. In particular, the NRDC/AG propose to allocate actual savings achieved based on the same relative proportion of

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savings allocated across Sections in the forecast submitted and approved by the Commission in the EE filings. Staff believes this could have practical complications if the utility wanted to ramp up the Section 8-103 portion of the expanded EE program in order to achieve the overall Section 8-103 energy savings goal (e.g., if it appears another Section 8-103 EE program is falling short of its expected savings). Staff believes this situation is possible for EE programs such as residential lighting.
City of Chicago Response: Under the current construct that creates two statutory sources of energy efficiency programs, the Commission should treat the two Sections as separate portfolios. Treating the two portfolios as a combined portfolio with respect to EE goals could reduce the total amount of EE procured in comparison to two separate portfolios. This is because the 8-103 programs are implemented by the utilities pursuant to a statutory goal and budget constraint. In the event that 8-103 programs are unable to meet their savings goals within the statutory budget, a combined portfolio would allow the utilities to claim savings from 16-111.5B programs towards their 8-103 statutory goal. This would reduce the total amount of energy efficiency implemented in Illinois since the 16-111.5B programs do not have their own statutory goal, and would thus presumably be reduced in size to accommodate the 8-103 shortfall. In addition, the maximum budget (pursuant to the rate-cap) for 8-103 programs was determined by the General Assembly to apply to the EE procured pursuant to the 8-103 savings goal, the addition of the 16-111.5B portfolio evinces intent to procure additional, separate, EE. If the General Assembly intended to create a combined portfolio, presumably they would have simply increased the savings goals and budgets applicable to the existing 8-103 programs. They did not. Therefore, the goals of the two portfolios should not be combined. Nor should the Commission combine the budgets. The rate-cap applies to 8-103 programs but no such cap applies to the 16-111.5B programs. Separating the budgets allows the 16-111.5B portfolio to include cost-effective EE that is not currently procured under 8-103. Although the standards should be applied separately, the City sees no reason to have different standards for the two portfolios (except for those analyses required by statute).
ICC Staff Reply: Staff agrees with the City of Chicago's initial response that the two Sections should be treated as separate portfolios.

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B. Procurement of Energy Efficiency Programs

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4. How should EE programs be procured by the IPA? **4.1. For example, should the IPA procurement allow for multi-year EE programs? Can the number of years that the utilities propose for IPA EE programs be flexible (1, 2, 3, 4 or 5 years)?**
CUB Response: (Q4.1.) CUB agrees with ComEd and the IPA that there are not "restrictions on whether the utilities may solicit multi-year programs and propose those programs to the IPA." IPA Initial Comments at 2. Utilities should propose programs that are between 1-3 years so as to encourage longer term investment in energy efficiency. The statutory three year planning periods for the 8-103 portfolios provides a sensible framework and opportunity for the most advantageous and efficient coordination between the two types of programs.
ICC Staff Reply: Staff concurs with CUB's initial response that there are not restrictions on whether the utilities may solicit multi-year programs and propose those programs to the IPA.
NRDC/AG Response: IPA procurement should allow for multi-year programs. Not allowing multi-year procurement would reduce the amount of cost-effective savings that could be achieved – clearly counter to the intent of 16.111.5B – because some programs take two or more years to become cost-effective. Multi-year programs are necessary to achieve the maximum energy efficiency potential both because some measures require up-front infrastructure investment that require a couple of years of program participation and related savings to "pay for" these investments, and because the prospect of a multi-year contract will likely entice more prospective program implementers to make proposals. As noted in the response to question 1 above, any multi-year program bids should be aligned with the Section 8-103 planning periods. NRDC and the OAG disagree with Ameren that multi-year programs are only possible if gross savings and Net-to-Gross ("NTG") assumptions are deemed for three years. In Section 8-103 filings, utilities are planning to run programs for three years without such levels of certainty. There is no reason that cannot hold for IPA programs as well. The key is that there should be flexibility – as there is for the Section 8-103 portfolios – to address shortfalls in out years that result from changes in assumptions (or even simply under-performance) by acquiring offsetting savings from other initiatives. Such initiatives would include expansions of other multi-year IPA programs that are performing better than originally anticipated or initiation of new IPA programs. The need for and source of such offsets could be identified in subsequent IPA annual filings with the ICC.
ICC Staff Reply: Staff concurs with NRDC/AG's initial response that the IPA procurement should allow for multi-year programs.

4.2
How should payments be structured?
CUB Response: Payments to third party vendors should be structured around on a pay-for-performance contract. CUB agrees with Ameren that utilities may have some flexibility to structure contracts in a way that "the utility feels is most appropriate based on program dynamics," but that the utility must also conform to an agreed upon set of principles for designing contracts. Ameren Initial Comments at 3. CUB recommends that utilities, the IPA, Staff, and stakeholders work towards agreeing upon a set of principles for contract design under the IPA procurement in this process.
ICC Staff Reply: Staff generally concurs with CUB's initial response but questions whether developing a set of principles for contract design for the EE programs under the IPA procurement is appropriate at this time. It is not clear to Staff what specific concerns currently exist with respect to how the utilities have structured their existing Section 16-111.5B EE contracts.
NRDC/AG Response: It should be noted that there is no need (or legal requirement) for IPA program payments to be performance-based. The utilities should have the flexibility to structure payment terms with third-party vendors in the manner which best balances the potentially competing objectives of making the procurement process attractive to as many bidders as possible and providing confidence that the savings which are proposed/bid will actually be delivered.
ICC Staff Reply: Staff generally concurs with the NRDC/AG's initial response, but still prefers a "pay-for-performance" contracting approach.

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How should Section 16-111.5B EE programs be evaluated (e.g., using IL-TRM in effect at time of submission, using IL-TRM in effect at time of implementation, deemed NTG) and what is appropriate forum for review (e.g., docketed proceeding, SAG)?
CUB Response: Section 16-111.5B programs should be evaluated using the deemed savings values approved by the Commission through the Technical Reference Manual ("TRM") at the time a bid is submitted. These values must be prospective and last the length of the contract. The 16-111.5B programs are designed to encourage the growth of energy efficiency in Illinois, through both utility and third party vendor administered programs. All program administrators must have a reasonable degree of certainty in savings values. CUB agrees with ComEd that there is no need for a docketed proceeding to review compliance, but rather require the compliance filing of the evaluation reports in the compliance dockets for the 8-103 programs and/or in the IPA docket.

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ICC Staff Reply: Staff generally concurs with CUB's initial response, but notes that the evaluation reports for Section 16-111.5B EE programs can be reviewed in the compliance with energy savings goal dockets for the Section 8-103 EE programs.

NRDC/AG Response: The question seems to blur the difference between how savings should be "counted" relative to savings goals and how they should be "evaluated."

With respect to how savings are to be counted, NRDC and the OAG would support deeming unit savings values and NTG ratios for one year of program implementation, based on the TRM values in effect and NTG values assumed at the time that the IPA plan is approved by the ICC. While such values might occasionally be different than those assumed by the bidding contractors several months earlier, any change in savings would be reflected in modified program goals (so there would be no risk), would have to have been shown to still be cost-effective and would have been effectively accepted by the ICC. For multi-year bids, savings values in subsequent years would be subject to revision based on new information available before a year begins, but then locked in for that year. This approach would strike an appropriate balance between providing some certainty to prospective bidders of new or expanded programs (encouraging more to consider submitting bids and therefore increasing the volume of cost-effective savings acquired) while ensuring that shortfalls resulting from lowered savings assumptions can be offset in future years or that extra savings resulting from increased savings assumptions can be factored into IPA planning in future years.

The language of 16-111.5B does not require evaluation of all savings. Indeed, such evaluation would not always be prudent, particularly for smaller new programs (i.e. the cost of evaluation cannot always be justified by the increase in accuracy in savings estimation). Determinations of whether, when and what evaluation would be appropriate should be made on a case-by-case basis (i.e. particularly for larger programs). Expanded Section 8-103 programs would need to be evaluated using Section 8-103 rules to assess achievement of Section 8-103 savings targets, as well as any savings credited to the IPA portion of the expanded programs.

The default assumption should be that TRM and other savings assumptions and methodologies should be applied to both Section 8-103 and 16-111.5B programs. However, there may be reasons for assumptions and/or methodologies to differ. Both different target markets for certain measures and different delivery approaches can affect savings achieved per measure. Also, different incentive levels can have a significant impact on NTG rates. In general, we agree with Com Ed's suggestion that programs intended to capture all cost-effective efficiency potential through the IPA procurement process are likely to have lower levels of free ridership than programs funded through Section 8-103.

A hypothetical example might help make clear what we are proposing. Consider a new IPA program with the following characteristics at the time that the third-party vendor submitted its program proposal in the Spring of 2013:

• Proposes to install measure "X" in 1000 different homes (i.e. one measure per home, so 1000

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measures installed total);
- The assumed savings per measure is 1000 kWh/year, per the current TRM;
- The assumed NTG is 1.0;
- The TRC benefit-cost ratio for the program is 1.60

If during the ICC's consideration of the IPA's proposal to fund this program it is determined that the best NTG assumption for the program is 0.75 (rather than 1.0), so that the program benefit-cost ratio drops to 1.50,[2] the program would still be approved in late 2013. Further, it would use the deemed 1000 kWh/unit savings assumption and the deemed 0.75 NTG assumption for estimating savings for at least all of the first program year (i.e. PY7, running from June 2014 through May 2015).

If the program is evaluated and results become available in the early Spring of 2016 (i.e. well into the second year – PY8), then the deemed assumptions of 1000 kWh/unit and an NTG of 0.75 would continue to used to estimate PY8 savings. However, the evaluation results would be used to update assumptions for PY9 (i.e. starting in June 2016). For example, if the evaluation suggested that the actual saving per unit were only 500 kWh rather than the 1000 previously assumed, the utility would be required to use that value (which would presumably have found its way into a revised TRM as well) for PY9. In this case, the lower per unit savings would render the program no longer cost-effective (with a benefit-cost ratio of 0.75). As suggested in response to Question 7, the program should therefore be terminated at the end of PY8. If on the other hand, the evaluation suggested that savings per unit were 800 kWh, so that the program still had a benefit cost ration of 1.2, the program would continue to be implemented in PY9 but have to use the updated per unit savings assumption of 800 kWh when savings for the program in that year are estimated.

ICC Staff Reply: Staff is open to discussing at the workshop the NRDC/AG's evaluation proposal that is somewhat similar to how the Section 8-103 EE programs are evaluated. The primary difference in Staff's opinion between the NRDC/AG's evaluation/verification proposal for Section 16-111.5B EE programs and how the savings from the Section 8-103 EE programs are currently evaluated/verified is that the savings values included in the procurement plan filing for the Section 16-111.5B EE program would also be used during the "first program year" of the EE program's implementation/evaluation/verification; whereas the savings values included in the 3-year EE plan filings for the Section 8-103 EE programs can potentially differ from the savings values used in savings verification for the "first program year" of implementation/evaluation/verification of the Section 8-103 EE plan as the "first program year" would use the Updated IL-TRM values available in March prior to the start of the "first program year." Adopting the NRDC/AG's proposal would result in the "first program year" evaluation of an expanded EE program using different IL-TRMs (the savings of which may or may not differ between the two IL-TRMs), with the most up-to-date IL-TRM being used for the Section 8-103 portion of the expanded EE program and the older IL-TRM being used for the Section 16-111.5B portion of the expanded EE program. Similarly, Staff's initial proposal also resulted in the evaluators using two different IL-TRMs for savings verification of the expanded EE programs, but in contrast to the NRDC/AG's proposal, Staff's proposal would result in the

[2] Note that the benefit-cost ratio of a program does not decline in proportion to a change in NTG. This is because a change in NTG will lower both TRC benefits and TRC costs (the portion of program costs that are measure costs).

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evaluators using two different IL-TRMs in every program year evaluation of the expanded EE program, whereas the NRDC/AG's evaluation/verification proposal would result in two different IL-TRMs being used for only the "first program year" evaluation of the expanded EE program. The NRDC/AG proposed to use the "TRM values in effect… at the time that the IPA plan is approved by the ICC". Based on the timeframe for the annual EE assessments that occurred this year (in 2013, Ameren's annual solicitation (RFP) was released at the end of January, and the third party vendors' bid proposals were due in mid-March (prior to the consensus Updated IL-TRM being available), Staff is concerned that the NRDC/AG's proposal could result in additional issues subject to litigation in the procurement plan proceeding where the EE programs are being considered for approval. For example, due to revised TRM values that become available during the procurement plan proceeding (after bid submission), a simple adjustment to the savings using the bidder's original participation estimates multiplied by revised TRM values (which Staff assumes is the NRDC/AG proposal to have "any change in savings... reflected in modified program goals") could result in the EE program no longer screening as cost-effective, whereas if the bidder was made aware of the revised savings values, the bidder could have chosen to target some of the higher saving measures (i.e., adjusting expected participation) and if that were to occur, the EE program potentially could be forecasted to be cost-effective. Staff is concerned using this simplistic adjustment could result in litigation in the event the adjustment results in the program no longer screening as cost-effective. One option that could solve this potential problem would be for the utilities' annual solicitation process to begin once the consensus Updated IL-TRM is available (where the consensus Updated IL-TRM could be made available to bidders as an attachment to the RFP), with third party bid proposals potentially due around mid-April. This would give the utilities around three months to review the bids and perform cost-effectiveness analysis for the EE programs prior to the utilities' July 15th EE assessment submittal to the IPA. Another option to mitigate this potential problem would be to provide the Updated IL-TRM to bidders when available and give them an opportunity to adjust their bid and then require the utilities to rescreen the EE program for cost-effectiveness. However, Staff believes this option may not be feasible given various time constraints. With respect to program termination at the end of PY8 due to cost-ineffectiveness, Staff understands that the NRDC/AG's proposal is that "[t]he assessment of cost-effectiveness should be done for however many remaining years of the program are left. In other words, we are assessing the cost-effectiveness of continuing the program into the future, looking only at future savings and future costs. In this specific example, that would mean looking just at forecast PY9 participation, savings and costs. If the results came in late PY7 so that they could apply to both PY8 and PY9, then the cost-effectiveness assessment should use total forecast participation, savings and costs for PY8 and PY9." Staff generally concurs with the NRDC/AG's response related to EE program termination.

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5.1
Do EE programs and measures procured by the IPA pursuant to Section 16-111.5B *require* evaluation, measurement and verification?
CUB Response: Yes. 16-111.5B programs require EM&V to determine actual savings achievement. For administrative ease, utilities may use the 8-103 evaluators to verify that kWh savings occurred under the IPA procurement. In fact the Act allows for the recovery of costs related to EM&V in the utility energy efficiency riders and evaluation of all programs procured under 111.5B is necessary to ensure that savings were actually achieved.
ICC Staff Reply: Staff generally concurs with CUB's initial response.

5.1.1
Should assessments of IPA EE programs be included as part of the work done assessing Section 8-103 EE programs and measures through the Technical Reference Manual ("TRM")? Should the processes now completed for the evaluation of Section 8-103 EE programs, including the TRM and net-to-gross ("NTG") ratio development, also be done for Section 16-111.5B EE programs?
CUB Response: 16-111.5B programs should be included in the TRM and NTG ratio development processes if the programs are at least partially included in the 8-103 portfolios as well. CUB support's ComEd's goal of "[insulating] …bidders from measure change risk by relying on the TRM version in effect at the time proposals were submitted." ComEd Initial Comments at 3 CUB also agrees with ComEd's position that "programs intended to achieve a goal of all cost-effective energy efficiency will likely experience lower free-ridership when compared to historic 8-103 programs." *Id*.
ICC Staff Reply: Staff concurs that the Section 16-111.5B EE programs should be included in the TRM and NTG ratio development processes, but sees no need to limit the Section 16-111.5B EE programs included in the TRM and NTG ratio development processes to only those that are at least partially included in the Section 8-103 portfolios. The degree of involvement for the Section 16-111.5B EE programs in the NTG process will be greater if the NRDC/AG's proposal to annually update values is adopted.

5.1.2
Should the same NTG ratios and savings values, methodologies and assumptions be applied to both Section 8-103 EE programs and Section 16-111.5B EE programs?
CUB Response: Yes, the same NTG ratios and savings values, methodologies and assumptions should be applied to both 8-103 and 16-111.5B EE programs.
ICC Staff Reply: Staff generally concurs with CUB's initial response that the same savings values, methodologies, and assumptions should be applied to both Sections 8-103 and 16-111.5B EE programs. However, depending on the specific circumstances under which an EE program expansion occurs, Staff believes there may be certain instances when different NTG ratios may be warranted. Staff also notes that the values may differ depending on variances in values between IL-TRMs and thus which IL-TRM is in effect for the Section 8-103 versus Section 16-111.5B EE programs.

6
Is it reasonable to hold utilities (or third party vendors) accountable for annual EE savings goals (EE program-level or portfolio-level goals) established pursuant to Section 16-111.5B?
CUB Response: The Act establishes a collective goal to maximize all energy efficiency procured, but it is not a goal in the same way the EEPS is a goal – i.e. there are no set kWh savings for EE procured through the IPA process. Instead, the Act asks the Commission to see if "all cost-effective energy efficiency" has been procured. 220 ILCS 5/16-111.5B(g). This means the IPA should direct the utilities to purchase all cost-effective EE included in the utilities' annual load forecasts. This also means there can be no set goal beyond this, since what entails "all" cost-effective energy efficiency will change from year to year. CUB agrees with the IPA that there are not any "goals, budgets, or affected supply requirements in Section 16-111.5B, in contrast to Section 8-103 (which places savings obligations on utilities." IPA Initial Comments at 3.
ICC Staff Reply: Staff does not concur in CUB's initial response as Section 16-111.5B specifically requires the Commission to approve an annual savings goal expressed in megawatt-hours for the Section 16-111.5B EE programs. However, the consequences of not meeting said goal is not specified. Staff views Commission approval of the Section 16-111.5B energy savings goal to be comparable to Commission approval of a modified Section 8-103 energy savings goal (Section 8-103(b) as modified by subsection (d)).
NRDC/AG Response: Accountability for the achievement of annual energy efficiency savings goals is always necessary. The key question is: what form should the accountability take? As discussed above in response to question 3, NRDC and the OAG prefer that the Section 8-103 and IPA programs be planned and implemented in an integrated way (i.e. as if the IPA is simply another source of external funds available to support the attainment of statutory goals) with a single savings target and essentially a combined budget (with some limitations discussed above). If that proposal

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is adopted, there would be no purely "IPA savings". In that context, the utilities would have the same accountability for meeting a single "combined" savings goal that they have today for meeting Section 8-103 goals. The utilities would then have the flexibility to decide themselves whether and how to hold vendors accountable. As suggested in response to question 5, NRDC and the OAG support using ex-post evaluation results only prospectively, to adjust TRM values and forecast savings from programs implemented in the future. The only exception to this rule would be for purely custom savings calculations, where – by definition – there were no up-front savings assumptions used. In those cases, ex post evaluation results should be applied retrospectively. However, we expect such retrospective application to be very rare as custom savings calculations are rarely planned and used when addressing savings opportunities in residential and small business market segments.
ICC Staff Reply: Staff concurs with NRDC/AG's initial response that ex post evaluation results should be applied retrospectively for custom savings calculations.

6.1
How should failure of any party to fulfill its Section 16-111.5B obligations be dealt with in the context of Section 16-111.5B EE goals, budgets, and affected supply requirements?
CUB Response: The IPA and utilities have existing mechanisms and strategies for addressing generator default on supply contracts. These mechanisms and strategies should be applied to energy efficiency vendors, whether utility or third party, as well, to the extent practicable. Utilities should only sign pay for performance contracts with vendors to minimize ratepayer risk if a vendor is unable to fulfill its savings obligation under the contract. Contract design is of the utmost importance related to questions of cost-effectiveness and the actual achievement of savings. CUB recommends that utilities, the IPA, Staff, and stakeholders work towards agreeing upon a set of principles for contract design under the 111.5B procurement in this process.
ICC Staff Reply: A major component for dealing with defaults on supply contracts is marking them to market whereby the buyer or seller may make payments to keep contracts consistent with market prices. A standardized product definition with active forward markets makes this approach feasible. This does not exist for Section 16-111.5B products, making "pay-for-performance" a reasonable alternative. Staff is interested in learning about the specific concerns that CUB believes currently exist with respect to how the utilities have structured their existing Section 16-111.5B EE contracts. Further, Staff would like a better understanding of CUB's recommendation at the workshop: "Utilities should only sign pay for performance contracts with vendors to minimize ratepayer risk if a vendor is unable to fulfill its savings obligation under the contract."

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6.2
What are the consequences, if any, should an ex-post evaluation of an EE program or measure procured by the IPA pursuant to Section 16-111.5B fail to show the expected savings?
CUB Response: Utilities should contract under a pay-for-performance model to minimize customer risk if a vendor is unable to fulfill its savings obligation under the contract. Under this scenario, a vendor may already have been reimbursed for some start up or administrative costs, but will simply not receive the bulk of contracted payment for failure to comply with the terms of the contract.
ICC Staff Reply: Staff generally concurs in CUB's initial response.

7, 7.1, 7.2, 7.3, 7.4
7. Can utilities and third party vendors adjust (EE program and portfolio) goals or budgets after the IPA order but prior to implementation reflecting changes in values and the market given the over one year time lag between RFP submission and implementation? **7.1. Under what circumstances can the utilities and third party venders make such adjustments? Please be specific.** **7.2. What guidelines or rules should govern how such adjustments are made? Please be specific.** **7.3. What is the appropriate forum for review (e.g., docketed proceeding, SAG) and approval (e.g., docketed proceeding) of such adjustments, if any?** **7.4. Should previously approved EE programs that undergo goal or budget adjustments after approval be rescreened prior to implementation with revised cost-effectiveness estimates submitted to the IPA and the Commission? What should happen if the revised EE program goal (and budget) results in the EE program screening as cost-ineffective?**
CUB Response: (Q7.) No, utilities and third party vendors cannot adjust energy efficiency programs or budgets after the IPA order but prior to implementation. Vendors should not be held accountable to changes in values or the market after a program has already been determined to be cost-effective. Doing so would create a high degree of uncertainty that would be prohibitive to vendors bidding in this market, increase the cost of the energy efficiency procured, and inhibit the procurement of all cost-effective energy. (Q7.1.) N/A (Q7.2.) N/A (Q7.3.) ComEd's assertion that utilities should have flexibility to shift funds among Section 111.5B programs as well as between Section 111.5B and Section 8-103 programs, and yet not be subject to review under any forum, aside from notifying the IPA, should be rejected. ComEd Initial Comments at 4. Not only does it lack a foundation in the Act, but it constitutes a request for an enormous degree of control over these programs with no oversight. If utilities were to have this degree of control, it would create uncertainty for third party vendors and limit the amount of energy efficiency available to be procured. If a utility does take action with respect to an IPA-procured EE programs, that action should be scrutinized in an ICC reconciliation proceeding for the costs of all EE recovered from that utility's customers. (Q7.4.) EE programs approved for purchase through the IPA process should not be rescreened for cost-effectiveness prior to implementation. CUB disagrees with ComEd's position that if a program is no longer cost-effective, "it should be dropped and the IPA would be notified through a mutually agreed-upon means," ComEd Initial Comments at 4, a position seconded by Ameren. Ameren Initial Comments at 6. ComEd's remarks here seem to contradict the Company's previous assertion under question 4 that it would be "appropriate to use the TRM at the time of the RFP submission for purposes of the pay-for-performance structure." ComEd Initial

7, 7.1, 7.2, 7.3, 7.4

Comments at 3. ComEd implied there that programs procured through the IPA would not be rescreened or amended that was cost-effective at the time the RFP was submitted. This view counters the Act's intention to treat Section 16-111.5B programs as the equivalent of supply and inhibits the use of this procurement to expand third-party programs and promote longer EE programs and measures (which in turn would enable EE programs and measure for populations that might be harder to serve than traditional customers). This request for unlimited discretion without Commission oversight overlooks the fact that under a properly designed pay for performance contract, the EE vendors are the parties taking the risk of non-performance, and should be rejected.

ICC Staff Reply: (Q7.) Utilities have the obligation to prudently manage their contracts.

(Q7.3.) Staff concurs with CUB's initial response that "[i]f a utility does take action with respect to an IPA-procured EE programs, that action should be scrutinized in an ICC reconciliation proceeding for the costs of all EE recovered from that utility's customers." Staff did not interpret ComEd's position to be that funds could be shifted between the Sections 8-103 and 16-111.5B EE portfolios.

(Q7.4.) Staff disagrees with CUB's initial response to the extent to which it is implying that EE programs that are found to be cost-ineffective should necessarily continue to be funded by ratepayers.

NRDC/AG Response: Such adjustments would only be applicable to multi-year programs under the NRDC and OAG proposal to deem values for one year of implementation. (See response to Question 5.) For such programs, adjustments would need to be made before the next program year begins. The process would be the same as the current proposed process for updating and applying new values in the TRM – i.e. agreed by consensus of the SAG or, if no consensus is reached, using the old TRM assumptions until an ICC decision to change the TRM has been issued in a docketed proceeding, with an appropriate "grace period" provided. Changes to NTG assumptions should also be made through consensus of the SAG, if possible, before the program year begins. Where consensus is not reached, the old assumption should continue to be used until an ICC decision to change it has been issued in a docketed proceeding, with an appropriate grace period provided.

If assumptions for multi-year programs are changed, then the utilities should adjust program portfolios as needed to offset any shortfalls and ensure that they meet their goals. If such adjustments are substantial enough to potentially render a program not cost-effective, then the utility should conduct a new cost-effectiveness assessment. If that assessment suggests a program is no longer cost-effective, its implementation should be terminated.

ICC Staff Reply: Staff does not concur with the notion of a "grace period" under the NRDC/AG's proposal, but believes the measure would be subject to retrospective evaluation risk since it is not contained in the consensus Updated IL-TRM. Under the proposal to deem the IL-TRM values used at the time of bid submittal for multi-year EE programs offered under Section 16-111.5B, if the measure savings values were not contained in the consensus Updated IL-TRM, then a request could be made in the procurement plan docket with respect to how to handle those values (e.g., whether the savings values used by the bidder (or such other values proposed by any other party) should be deemed for all years) for the purposes of evaluation.

7, 7.1, 7.2, 7.3, 7.4
Staff notes that the practical effect of the NRDC/AG's proposal may be that the values would be deemed for three years for new programs unless there is a positive evaluation finding, as any negative finding that could result in the vendor being paid less (which depends on the specifics of the "pay-for-performance" aspect of the contract) could be contested in a proceeding and the litigation process could be delayed. Staff generally concurs that if the assessment suggests an EE program is not projected to be cost-effective then its implementation should be terminated.

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Post-Workshop Section 16-111.5B Energy Efficiency Questions
C. Energy Efficiency Program Management

8
What type and amount of flexibility is allowed or appropriate for EE programs approved in an IPA procurement plan under Section 16-111.5B (for one year, and for multiple years, and flexibility between the Sections 16-111.5B and 8-103 EE portfolios)?
CUB Response: While CUB agrees that multiple years of energy efficiency can be procured in the IPA's annual procurement, CUB does not support moving funding amongst the Section 16-111.5B programs or between the Sections 16-111.5B and 8-103 programs. If a Section 16-111.5B program fails to deliver its savings, new programs and measures will, by operation of the statute, be included in the subsequent year's assessment of load to the IPA: the utility will have that much less efficiency procured in advance.
ICC Staff Reply: Staff concurs with CUB's initial response that funding should not be shifted between Sections 8-103 and 16-111.5B EE programs.
NRDC/AG Response: The utilities should be provided the greatest flexibility possible to manage the efficiency program portfolios (whether a single combined portfolio as we suggest is ideal in response to question 3, or two separate but partially integrated portfolios) as effectively and efficiently as possible. One key element of this objective would be to maximize cost-effective energy savings. To that end, NRDC and the OAG agree with Com Ed that the utility should have the flexibility to shift resources between and among IPA programs, subject to any contractual constraints with 3rd party vendors. NRDC and the OAG also agree with Com Ed that the statute's objective of capturing all cost-effective efficiency potential suggests it would be appropriate to allow the utilities to increase funding for IPA programs (and/or program expansions) that could cost-effectively exceed their savings targets (i.e., are "over-achieving"). However, details as to the level of increased funding and how it would be recovered from ratepayers would need to be analyzed and approved by the Commission. Utilities should also have the flexibility to move budget and savings between Section 8-103 and IPA programs, but only if they elect to adopt a single, combined savings target – with Section 8-103 accountability for not meeting that target. (See discussion of "Option A" in the NRDC/OAG response to Question 3.) Even then, such flexibility would be contingent on the utility both seeking to acquire all cost-effective savings from residential and small business customers and spending all of the IPA funds on such customers.
ICC Staff Reply: Staff does not support a single combined portfolio under the existing law.

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Post-Workshop Section 16-111.5B Energy Efficiency Questions

8.1
For example, can or should resources be transferred between and among Section 16-111.5B EE programs in order to maximize cost-effective savings?
CUB Response: No. If an IPA program no longer is achieving savings, then the utility should report that to the IPA in the year-end assessment, and the IPA should eliminate those presumed kWh from the existing resource load. The Act is clear that the 16-111.5B programs were not designed to function as a utility-managed portfolio, but rather as supply contracts between the IPA and energy efficiency vendors. CUB agrees with ComEd that if a program over-achieves versus its proposed goal, that the utility should allow the program to continue achieving savings beyond the goal without "removing funds from other programs," and rather responding by adjusting funds for the program upward, and the load forecasts accordingly. ComEd Initial Comments at Ameren maintains that resources "should be transferred between and among Sections 16-111.5B and 8-103 programs but not in order to maximize savings, though Ameren provides no reason for why this would be necessary" Ameren Initial Comments at 7 Ameren makes the same assertion in response to question 8.2. The intent of Section 16-111.5B is to maximize savings from cost-effective energy efficiency programs. While CUB does not support allowing the utilities to shift funds among 16-111.5B programs, or between 16-111.5B and 8-103 programs, CUB believes maximizing savings from cost-effective energy efficiency programs should be the goal of all parties involved in these workshops. In order to better understand Ameren's concerns, CUB requests that Ameren elaborate on this assertion in reply comments.
ICC Staff Reply: Staff stands by its initial comments on this question.

8.2
Can or should resources be transferred between the Section 16-111.5B EE portfolio and the Section 8-103 EE portfolio in order to maximize cost-effective savings?
CUB Response: No. The Section 8-103 programs are utility managed while the Section 16-111.5B programs function as supply under the IPA's procurement. There should be no need to transfer resources between the two types of programs to maximize savings. Utilities' statutory targets are reduced under the statutory rate cap, 220 ILCS 5/8-103(d). Utilities and other vendors contract for a specific amount of achievable, cost-effective savings under the Section 16-111.5B procurement.
ICC Staff Reply: Staff generally concurs with CUB's initial response that resources cannot be transferred between the Section 16-111.5B EE portfolio and the Section 8-103 EE portfolio.

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Post-Workshop Section 16-111.5B Energy Efficiency Questions
D. Cost-Effectiveness of Energy Efficiency Programs and Measures

9
What criteria of cost-effectiveness is appropriate for EE programs and measures procured by the IPA pursuant to Section 16-111.5B?
CUB Response: The Act has one screen for the 111.5B programs: a TRC result of greater than one at the program or measure level. 220 ILCS 5/16-111.5B as defined in the IPA Act. 20 ILCS 3855/1-10.
ICC Staff Reply: Staff concurs with CUB's initial response that a TRC result of greater than one is required at the EE program or measure level per Section 16-111.5B. However, Staff also believes that Section 16-111.5B(a)(3)(D) requires the Utility Cost Test to be used as a screen.
NRDC/AG Response: Section 16-111.5B(b) states: For purposes of this Section . . . the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act. 220 ILCS 5/16-111.5B(b). Section 8-103(a) states: As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test. 220 ILCS 5/8-103(a). Therefore, with regard to the IPA's procurement, the term "cost-effective" means that the programs and measures pass the total resources cost ("TRC") test. According to the statute, this is *the only* requirement that programs and measures must satisfy for the IPA to include them in the procurement plan. Section 16-111.5B(a)(4) states: The Illinois Power Agency **shall include in the procurement plan** prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act **energy efficiency programs and measures it determines are cost-effective** and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a). 220 ILCS 5/15-111.5B(a)(4) (Emphasis added.) Section 16-111.5B(a)(4) makes clear the IPA *is required* to include in the procurement plan the programs and measures that are "cost-effective," meaning that they pass the total resources cost test. The use of the phrase "shall include" means that the IPA is disallowed from using additional screening processes outside of the TRC test, to prevent programs and measures from being included in the procurement plan.

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This restriction on additional screening processes also applies to the Commission in approving IPA's proposals. Section 16-111.5B(a)(5) states:

Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission **shall also approve the energy efficiency programs and measures included in the procurement plan**, including the annual energy savings goal, if the Commission determines they **fully capture the potential for all achievable cost-effective savings**, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.

In the event the Commission approves the procurement of additional energy efficiency, it **shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency** and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

220 ILCS 5/16-111.5B(a)(5) (Emphasis added.) Section 16-111.5B(a)(5) makes clear that if the Commission determines that the programs and measures are "cost-effective," then it must approve them. The use of the phrase "shall also approve" means that the Commission is statutorily required to approve the programs and measures if they are "cost-effective," meaning they pass the TRC test. In addition, the Commission's analysis of the additional energy efficiency procurement should find that the portfolio passes the TRC test and "fully captures the potential for all achievable cost-effective savings to the extent practicable." It is conceivable that the ICC could find that the Utilities have fallen short of the "fully captures all achievable savings" requirement if the efficiency portfolio presented in the IPA portfolio does not satisfy the potential identified in the Section 16-111B(a)(3)(A) potential studies. These are the only requirements programs and measures must achieve to be included in the procurement plan and subsequently approved by the Commission.

During the workshop there was discussion as to the level at which the TRC test should be applied. Basically, there was disagreement over the meaning of the term "programs and measures." The definition of "cost-effective" in Section 8-103(a) has been interpreted to mean at the portfolio level, and since Section 16-111.5B(b) refers to Section 8-103(a), the same interpretation applies to IPA programs. Simply put, what is a portfolio other than "programs and measures"? There is no language in Section 16-111.5B that suggests IPA programs are required to pass a more stringent standard than those of Section 8-103(a). During the workshop, Staff seemed to be of the opinion that "programs and measures" meant that the TRC test is applied *to each* program or measure. This is an inaccurate reading of the statute. Tellingly, 16-111.5B(a)(4) does not state that the IPA is required to include in the procurement plan "*each* energy efficiency program and measure" it determines is cost-effective. The use of the plural and combined term, "programs and measures" indicates they are to be considered together when being evaluated under the TRC test.

As an aside, one of the current barriers to participation in the current utility processes for soliciting third-party proposals for new programs is that prospective bidders have no way of testing whether

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their program concepts will pass the TRC test. Even if they have a cost-effectiveness screening tool and are using only measures with assumptions already provided in the TRM, they do not know what the utilities' avoided costs are, so they cannot calculate the TRC benefits of their savings. Thus, unless they are only planning to promote measures and/or program concepts that can be expected to be extremely cost-effective (and many of those are already included in the utilities' own programs with which new proposals are not supposed to compete), they are faced with a choice of investing significant effort and cost into a bid that might be rejected because it fails TRC screening. Further, even if they are willing to run that risk and absorb the cost of doing so, they have no opportunity to optimize their bid in the event that it fails screening by a modest margin. This barrier can and should be addressed by the utilities making available to prospective bidders a tool – either on-line or otherwise – that bidders could use to screen and optimize program ideas themselves before they are bid. Any confidential information in the tool, such as utility avoided costs, could be kept from bidders through password protection of a part of the tool or other means.
ICC Staff Reply: Staff does not concur in the NRDC/AG's proposal to interpret the cost-effectiveness requirement in Section 16-111.5B as being one at the portfolio level. Notably, Section 8-103(a) simply indicates that "cost-effective" means that the measures satisfy the total resource cost test, and it provides a reference to where the definition of the "total resource cost test" can be found, namely the IPA Act. It is not until Section 8-103(f) that the portfolio-level cost-effectiveness minimum requirement is specified. Section 8-103(f)(5) specifically states: "a utility shall … [d]emonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs." Further, it seems that if the definition of "cost-effective" in Section 8-103(a) actually defined "cost-effective" at the "portfolio level," then there would be no need for the statute to specify in Section 8-103(f)(5) that a minimum requirement of EE plan approval is for the entire *"portfolio"* excluding low-income programs to be shown to be cost-effective. Staff takes issue with the NRDC/AG claim that "[t]here is no language in Section 16-111.5B that suggests IPA programs are required to pass a more stringent standard than those of Section 8-103(a)." Staff believes there are plenty of reasons the Section 16-111.5B EE programs should pass a more stringent standard than the Section 8-103 programs, including but not limited to: (1) the plain language of Section 16-111.5B specifies cost-effectiveness of EE measures or programs; (2) Section 16-111.5B EE funding is not subject to the Section 8-103(d) spending cap; (3) Section 16-111.5B is not concerned with ensuring opportunities for customers of all rate classes to participate in the EE programs (whereas Section 8-103 is concerned); and (4) Section 16-111.5B is concerned with treating EE as supply, which is subject to approval in the procurement plan proceeding, of which a general goal is for the procurement plan to ensure adequate, reliable, affordable, *efficient, and environmentally sustainable electric service at the lowest total cost over time*, taking into account any benefits of price stability. Staff contends that the *plain language* (references to "measures" and "programs" and *not* "portfolio") of Section 16-111.5B indicates that the EE programs and/or measures procured through annual procurement proceedings are required to be cost-effective. Further, given the funding approved for the Section 16-111.5B EE programs is in excess of the Section 8-103(d) ratepayer impact cap, it is reasonable to believe that it was intended that the

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approval of this additional funding should undergo a "more stringent standard" than that imposed as a minimum requirement of approval of the Section 8-103 EE portfolio which is subject to the Section 8-103(d) spending cap. Moreover, Section 16-111.5B contains no requirement that the "overall portfolio… represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs", whereas Section 8-103(f)(5) specifically links the *diverse cross-section of opportunities for customers of all rate classes to participate* requirement to the minimum requirement that the EE *portfolio* must be shown to be cost-effective, excluding low-income programs, in order for the EE plan to be approved by the Commission. These two provisions – (i) *diverse cross-section for customers of all rate classes to participate* and *(ii) portfolio level cost-effectiveness* – are listed together as one of the seven filing requirements for Section 8-103 EE plan approval. *See,* 220 ILCS 5/8-103(f)(5). Thus, one could interpret Section 8-103(f)(5) to mean that part of the reason that one of the minimum requirements for EE plan approval under Section 8-103 is for the EE plan to be cost-effective at the portfolio-level is due in part to the fact that the EE plan has to ensure there is an opportunity for customers of all rate classes to participate in the EE programs, of which it is well known that the costs of EE vary across rate classes. In addition, while the NRDC/AG's initial response focuses on the use of the word "and" between programs and measures, in numerous other areas in Section 16-111.5B, the appropriate reference is cost-effective programs "or" measures. Finally, in the last procurement plan docket, the Commission explicitly rejected and accepted certain EE programs based in part on the EE *program's* cost-effectiveness. Moreover, there was no mention in the Order of a portfolio-level TRC for the combined Ameren and ComEd portfolio of EE programs and measures. In the last procurement plan docket, there was only a showing that individual EE *programs* were cost-effective. The Commission's Order states: "NRDC's position and arguments regarding ComEd's Fridge and Freezer Recycling program are not convincing. These concerns with ComEd's screening may have some validity with regard to other jurisdictions or other programs but not with regard to this specific program. The Commission concludes that the use of a one-year screening period and Staff's proposed treatment of the customer incentive are reasonable. The Commission concludes that the Fridge and Freezer Recycle Rewards program should be excluded from the approved 2013 Procurement Plan… The Commission concludes that ComEd's analysis, as corrected, demonstrates that the Energy Efficiency Lighting program is cost-effective and should be included in the approved 2013 Procurement Plan." Final Order at 268-272, Docket No. 12-0544, December 19, 2012.

ICC Staff Reply Comments, May 29, 2013
Post-Workshop Section 16-111.5B Energy Efficiency Questions

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What is the meaning of 220 ILCS 5/16-111.5B(a)(3)(D)-(E) in terms of which statistics or cost-effectiveness tests should be used to comply with each of the two requirements? Please be specific.

(D) Analysis showing that the new or expanded cost-effective EE programs or measures would lead to a reduction in the overall cost of electric service.

(E) Analysis of how the cost of procuring additional cost-effective EE measures compares over the life of the measures to the prevailing cost of comparable supply.

CUB Response: (D) This information is to be included as an additional component of the utilities' annual load forecasts pursuant to Section 16-111.5B. It is not a screen to be applied to programs or measures fund cost-effective under Section 16-111.5B but rather a source of information for the Commission to consider in its obligatory evaluation of whether or not all "cost-effective" energy efficiency was procured. 220 ILCS 5/16-111.5B(g). The language in subsection D is unclear whether a reduction in the overall cost of electric service refers to those costs collected from all utility customers – which would include customers outside the statutory mandate of the IPA, or only those customers receiving supply through the IPA procurement.

The statute does not mandate any specific analysis. CUB understands there to be no consensus on the type of test used for this analysis, or, even assuming a common test could be used, consistency at this time as to how that test, e.g. the Utility Cost Test ("UCT"), would be used to determine whether the 111.5B programs and measures lead to a reduction in the overall cost of electric service. However, CUB does believe that this analysis is a collective one, of all EE programs and measures procured as a whole, rather than any individual assessment.

(E) As with above, this is an additional analysis included in the annual load forecasts used to inform the evaluation of whether or not all cost-effective energy efficiency was procured. The language here again is not clear whether an evaluation of the programs is to be included, even if a singular evaluation, or whether it is a collective evaluation of measures only. Nor is it clear how a comparison of value can be done between the life of the measures procured and the cost of supply without taking into account the projected cost of supply over the life of the measures. As with above, the statute is silent on what, if any, standard analysis should be used to meet this requirement.

ICC Staff Reply: (D) Staff does not concur in CUB's initial response that Section 16-111.5B(a)(3)(D) is not a screen. With respect to a portfolio view of the UCT as supported by CUB, Staff believes it is better policy to calculate the UCT for each program in order to help ensure the portfolio UCT is favorable.

With respect to whether a reduction in the overall cost of electric service refers to those costs collected from all utility customers – which would include customers outside the statutory mandate of the IPA, or only those customers receiving supply through the IPA procurement, Staff believes that the utilities could provide results from both analyses as part of complying with Section 16-111.5B(a)(3)(D) and the Commission can determine how it would like to use the information. Staff notes that providing the UCT results under Section 16-111.5B(a)(3)(D) would

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provide useful information to the Commission that it can consider in its determination pursuant to Section 16-111.5B(a)(5) and Section 16-111.5(d)(4). Section 16-111.5B(a)(5) states: "*Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act*, the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, *to the extent practicable,* and otherwise satisfy the requirements of Section 8-103 of this Act." 220 ILCS 5/16-111.5B(a)(5). *(Emphases added).* Section 16-111.5(d)(4) states: "The Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, *efficient, and environmentally sustainable electric service at the lowest total cost over time*, taking into account any benefits of price stability." 220 ILCS 5/16-111.5(d)(4). *(Emphasis added).* Certainly the Commission can rely upon the information required under Section 16-111.5B(a)(3) when it is determining whether each of the EE programs included in the assessment furthers the statute's requirement for the procurement plan to "ensure adequate, reliable, affordable, efficient, and environmentally sustainable ***electric service*** *at the lowest total cost over time*, taking into account any benefits of price stability." 220 ILCS 5/16-111.5(d)(4). *(Emphasis added).* Notably, Section 16-111.5B(a)(3)(D) requires an analysis that shows the cost-effective EE programs or measures *would lead to a reduction in the overall cost of* ***electric service***.

(E) Staff stands by its initial comments on this question.

NRDC/AG Response: **Subsection D**

With respect to subsection D, the key phrase is "overall cost of electric service." This can only reasonably be interpreted as suggesting the use of the Program Administrator Cost Test (PACT), sometimes also referred to as the Utility Cost Test (UCT).

It is important to note that the law refers to overall cost. It does not refer to cost per unit or price. Consider the following two options: (1) an electricity customer buys 10,000 kWh per year at a price of $0.10 per kWh for a total annual electric bill of $1000; or (2) an electricity customer buys 8000 kWh per year at a price of $0.11 per kWh for a total annual electric bill of $880. Which has the lower "overall cost of electric service"? The second customer clearly incurs a lower overall ***cost*** even if the price it pays for electricity is higher. In its comments, Ameren has suggested that the Ratepayer Impact (RIM) test is the appropriate test for subsection D. However, the RIM test only measures whether electric ***rates*** will increase or decrease. It does not measure whether total electric costs will increase or decrease. Thus, it cannot be the appropriate test.

There are four different cost-effectiveness tests that are used in the energy efficiency industry to measure overall costs: (1) the participant test; (2) PACT/UCT; (3) the TRC; and (4) the societal test. Each measures "overall costs", but from different perspectives. The participant test only measures overall costs to the customers who participate in efficiency programs. However, the term "overall cost of electric service" appears to refer to all customers in aggregate, not just program participants. Both the TRC and Societal tests include benefits – e.g. reductions in the use of natural gas or other fuels – that do not directly affect the cost of electric service. Moreover, both include costs – i.e. the portion of incremental costs of efficiency measures that is not born by the utility program – which do not affect the cost of electric service. Thus, neither of those tests are appropriate either. The PACT/UCT is the only test that focuses on overall costs and measures the value of just electric system benefits and costs in doing

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so. Put another way, it answers the question: "Will utility bills increase?"[3] That is the same thing as asking what the effect on the overall cost of electric service will be. **Subsection E** The language in subsection E is not as clear is one might hope. The NRDC/OAG best interpretation of the language is that it refers to the TRC. Note that unlike subsection D, it is not specifically focused on electric energy. It asks for a comparison of the cost of "energy efficiency measures" (not *electric* efficiency) to the "comparable cost of supply" (not the comparable cost of *electric* supply). While 16-111.5B is clearly intended to acquire cost-effective electric efficiency, many electric efficiency measures also provide natural gas savings, for example. Those benefits would need to be captured in any cost-effectiveness assessment conducted pursuant to Subsection E. The TRC test is the only test that does so.
ICC Staff Reply: (D) Staff concurs with the NRDC/AG's initial response that the Section 16-111.5B(a)(3)(D) should be interpreted as the PACT/UCT. (E) Staff concurs with the NRDC/AG's initial response that Section 16-111.5B(a)(3)(D) could be interpreted as the TRC test.

[3] See: Energy and Environmental Economics, Inc. and the Regulatory Assistance Project, *"Understanding Cost-Effectiveness of Energy Efficiency Programs: Best Practices, Technical Methods, and Emerging Issues for Policy-Makers"*, A Resource of the National Action Plan for Energy Efficiency, November 2008, p. 2-2. Ironically, this is the same document cited by Ameren in its argument that the RIM test be used. However, the document clearly states that the key question answered by the RIM test is "Will utility *rates* increase?" (Emphasis added.) Again, "overall cost of electric service" means total cost, not rates (i.e. not price per unit).

ICC Staff Reply Comments, May 29, 2013
Post-Workshop Section 16-111.5B Energy Efficiency Questions

10.1

How should the additional information required of the utilities in the IPA's procurement of EE programs and measures under Section 16-111.5B(a)(3)(D)-(E) be used? For example, should this additional information be used to exclude EE programs from IPA consideration?

CUB Response: The information required of the utilities under subsections "D" and "E" is part of the "assessment" the utilities must provide to the IPA along with their load forecasts. The Act does not instruct utilities or the IPA to use any of the analyses mentioned in the assessment as a screen for energy efficiency programs. Rather, the information in the assessment can be considered by the Commission to determine if all cost-effective energy efficiency is being procured. Any analyses included in the assessment should not be used to exclude programs from the IPA or Commission's consideration.

ICC Staff Reply: Staff concurs with CUB's initial response that "the information in the assessment can be considered by the Commission to determine if all cost-effective energy efficiency is being procured." However, Staff believes that the Commission can consider this information when it is determining which EE programs should be approved (or excluded) in the procurement docket pursuant to Section 16-111.5B(a)(5) and Section 16-111.5(d)(5).

NRDC/AG Response: The additional information gathered from 220 ILCS 5/16-111.5B(a)(3)(D)-(E) is just information. The statute does not require particular action to be taken based on the information provided through 220 ILCS 5/16-111.5B(a)(3)(D)-(E). In fact, the statute limits the IPA's review of programs and measures to strictly if they are "cost-effective," meaning if they pass the TRC test. Therefore, regardless of what test utilities use for 220 ILCS 5/16-111.5B(a)(3)(D)-(E), the results of such tests should not screen out programs and measures that pass the TRC test from being presented to the IPA for inclusion in the procurement plan. Therefore, NRDC and the OAG urge utilities to no longer view 220 ILCS 5/16-111.5B(a)(3)(D) as screening out programs and measures that pass the TRC test. As explained in Question 9, the statute requires IPA to include programs and measures that pass the TRC test, and this is the only requirement.

ICC Staff Reply: Staff does not concur in the NRDC/AG's initial response as Staff believes that pursuant to Section 16-111.5B(a)(3)(D), the Utility Cost Test should be used as a screen.

Post-Workshop Section 16-111.5B Energy Efficiency Questions

II. Appendix A. Post-Workshop Section 16-111.5B Energy Efficiency Questions

Comments regarding the Post-Workshop Section 16-111.5B Energy Efficiency Questions should be sent to Jennifer Hinman jhinman@icc.illinois.gov and Thomas Kennedy tkennedy@icc.illinois.gov by the date shown below in the revised schedule.

Initial IPA/Utility Comments due May 8, 2013
Initial Staff/Intervenor Comments (and Replies to IPA/Utility Initial Comments) due May 15, 2013
All Parties' Reply Comments due May 29, 2013

Comments will be posted on the Commission's website.
http://www.icc.illinois.gov/Electricity/EnergyEfficiencyWorkshops161115B.aspx

The next Section 16-111.5B EE Workshops will document, review, and clarify areas where consensus has been reached based on parties' Initial and Reply Comments regarding the Post-Workshop Section 16-111.5B EE Questions. Workshop#2 (June 3, 2013, 10:30 AM – 4:30 PM) and Workshop#3 (June 4, 2013, 9:00 AM – 4:30 PM) on Section 16-111.5B Energy Efficiency will be held at the Illinois Commerce Commission (Hearing Room A), 527 East Capitol Ave, Springfield, IL 62701. The Conference Line # is 1.866.418.3591, passcode 7951625#. Thanks again to Ameren for providing the toll-free conference line number.

Workshop#2, Monday, June 3, 2013, 10:30 AM – 4:30 PM
Workshop#3, Tuesday, June 4, 2013, 9:00 AM – 4:30 PM

Coordination of Energy Efficiency Programs

1. Is it feasible for the energy efficiency ("EE") programs and measures procured by the Illinois Power Agency ("IPA") pursuant to Section 16-111.5B[4] to include expansions of Section 8-103[5] EE programs and measures? If yes, please explain how, describe the benefits and costs of doing so, and explain whether expansions of Section 8-103 EE programs and measures should be included in IPA procurements of EE pursuant to Section 16-111.5B.

    1.1. Should the Section 16-111.5B EE programs be limited to new or different EE programs than those included in a utility's Section 8-103 EE portfolio? What are the benefits and costs of such an approach?

2. Should expansion of existing Section 8-103 EE programs under Section 16-111.5B also include expansion of DCEO's Section 8-103 EE programs? If yes, please explain how and describe the benefits and costs of such an approach.

[4] 220 ILCS 5/16-111.5B
[5] 220 ILCS 5/8-103

Post-Workshop Section 16-111.5B Energy Efficiency Questions

3. Given the existing EE statutes, should the Commission treat Sections 8-103 (EEPS) and 16-111.5B (IPA) EE portfolios as *separate* portfolios (*e.g.,* separate EE goals, separate budgets, separate sets of standards) or as a *combined* portfolio (*e.g.,* single EE goal, single budget, single set of harmonized standards)? Please explain which approach (*i.e.,* separate or combined EE portfolios) is preferred and provide rationale.

    3.1. How would the preferred approach (*i.e.,* separate or combined EE portfolios) actually work in practice (in terms of EE evaluation, tracking, reporting, portfolio administration, goals, banking, flexibility, merged or separate budget, and other overlap with Section 8-103)? Please be very specific.

    3.2. Under what circumstances (if any) could you support the alternative approach (*i.e.,* separate or combined EE portfolios), and how would the alternative approach actually work in practice (in terms of EE evaluation, tracking, reporting, portfolio administration, goals, banking, flexibility, merged or separate budget, and other overlap with Section 8-103)? Please be specific.

Procurement of Energy Efficiency Programs

4. How should EE programs be procured by the IPA?

    4.1. For example, should the IPA procurement allow for multi-year EE programs? Can the number of years that the utilities propose for IPA EE programs be flexible (1, 2, 3, 4 or 5 years)?

    4.2. How should payments be structured?

5. How should Section 16-111.5B EE programs be evaluated (*e.g.,* using IL-TRM in effect at time of submission, using IL-TRM in effect at time of implementation, deemed NTG) and what is appropriate forum for review (*e.g.,* docketed proceeding, SAG)?

    5.1. Do EE programs and measures procured by the IPA pursuant to Section 16-111.5B *require* evaluation, measurement and verification? If yes, please answer the following as well:

        5.1.1. Should assessments of IPA EE programs be included as part of the work done assessing Section 8-103 EE programs and measures through the Technical Reference Manual ("TRM")? Should the processes now completed for the evaluation of Section 8-103 EE programs, including the TRM and net-to-gross ("NTG") ratio development, also be done for Section 16-111.5B EE programs?

        5.1.2. Should the same NTG ratios and savings values, methodologies and assumptions be applied to both Section 8-103 EE programs and Section 16-111.5B EE programs?

6. Is it reasonable to hold utilities (or third party vendors) accountable for annual EE savings goals (EE program-level or portfolio-level goals) established pursuant to Section 16-111.5B?

6.1. How should failure of any party to fulfill its Section 16-111.5B obligations be dealt with in the context of Section 16-111.5B EE goals, budgets, and affected supply requirements[6]?

6.2. What are the consequences, if any, should an ex-post evaluation of an EE program or measure procured by the IPA pursuant to Section 16-111.5B fail to show the expected savings?

7. Can utilities and third party vendors adjust (EE program and portfolio) goals or budgets after the IPA order but prior to implementation reflecting changes in values and the market given the over one year time lag between RFP submission and implementation? If yes, please answer the following as well:

7.1. Under what circumstances can the utilities and third party venders make such adjustments? Please be specific.

7.2. What guidelines or rules should govern how such adjustments are made? Please be specific.

7.3. What is the appropriate forum for review (*e.g.,* docketed proceeding, SAG) and approval (*e.g.,* docketed proceeding) of such adjustments, if any?

7.4. Should previously approved EE programs that undergo goal or budget adjustments after approval be rescreened prior to implementation with revised cost-effectiveness estimates submitted to the IPA and the Commission? What should happen if the revised EE program goal (and budget) results in the EE program screening as cost-ineffective?

Energy Efficiency Program Management

8. What type and amount of flexibility is allowed or appropriate for EE programs approved in an IPA procurement plan under Section 16-111.5B (for one year, and for multiple years, and flexibility between the Sections 16-111.5B and 8-103 EE portfolios)?

8.1. For example, can or should resources be transferred between and among Section 16-111.5B EE programs in order to maximize cost-effective savings?

8.2. Can or should resources be transferred between the Section 16-111.5B EE portfolio and the Section 8-103 EE portfolio in order to maximize cost-effective savings?

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[6] Please note that item (5) under subsection (a) of Section 16-111.5B states:

(5) Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

220 ILCS 5/16-111.5B(a)(5).

Post-Workshop Section 16-111.5B Energy Efficiency Questions

Cost-Effectiveness of Energy Efficiency Programs and Measures

9. What criteria of cost-effectiveness is appropriate for EE programs and measures procured by the IPA pursuant to Section 16-111.5B?

10. What is the meaning of 220 ILCS 5/16-111.5B(a)(3)(D)-(E) in terms of which statistics or cost-effectiveness tests should be used to comply with each of the two requirements? Please be specific.

    (D) Analysis showing that the new or expanded cost-effective EE programs or measures would lead to a reduction in the overall cost of electric service.

    (E) Analysis of how the cost of procuring additional cost-effective EE measures compares over the life of the measures to the prevailing cost of comparable supply.

    10.1. How should the additional information required of the utilities in the IPA's procurement of EE programs and measures under Section 16-111.5B(a)(3)(D)-(E) be used? For example, should this additional information be used to exclude EE programs from IPA consideration?

III. Appendix B. Sections 8-103 and 16-111.5B Energy Efficiency Timeline

Year	Month	EPY	Section 16-111.5B	Section 16-111.5B	Section 8-103 Plan Filing	TRM Update	EM&V
2012	June	EPY5					
2012	July	EPY5	Bids & EE Assessment submitted to IPA for PY6	Bids & EE Assessment July 15th (or other date determined by ICC or IPA)			
2012	August	EPY5	IPA Releases 2013 Draft Procurement Plan Mid August	Draft Procurement Plan August 15th or other date determined by ICC			
2012	September	EPY5	Comments on Draft Plan Due	Comments on Draft Plan Due 30 days after Posting Draft Plan (September 15th)			
2012	October	EPY5	Procurement Plan filed with the ICC	Procurement Plan filed with the ICC within 14 days after Comments			
2012	November	EPY5		ALJ PO in Procurement Docket historically released around November 20th, BOEs and RBOEs follow.			Draft EPY4 Evaluations
2012	December	EPY5	Commission Order in Procurement Docket for PY6	Commission Order in Procurement Docket, within 90 days after IPA files procurement plan with ICC, historically around December 20th			
2013	January	EPY5	RFP for 3rd Party Vendors released end January for PY7, (PY8, PY9)	RFP for 3rd Party Vendors released end January for PY7, (PY8, PY9)			
2013	February	EPY5					
2013	March	EPY5	3rd Party Vendor Proposals due Mid-March for PY7, (PY8, PY9)	3rd Party Vendor Proposals due Mid-March for PY7, (PY8, PY9)		TRM#2 filed with ICC by March 1 (used in 3-year plan filing, effective for EPY6)	
2013	April	EPY5					
2013	May	EPY5					
2013	June	EPY6					
2013	July	EPY6	Bids & EE Assessment submitted to IPA for PY7, (PY8, PY9)	Bids & EE Assessment July 15th (or other date determined by ICC or IPA)			
2013	August	EPY6	IPA Releases 2014 Draft Procurement Plan Mid August	Draft Procurement Plan August 15th or other date determined by ICC			

Year	Month	EPY	Section 16-111.5B	Section 16-111.5B	Section 8-103 Plan Filing	TRM Update	EM&V
2013	September	**EPY6**	Comments on Draft Plan Due	Comments on Draft Plan Due 30 days after Posting Draft Plan (September 15th)	Electric 3-Year Plan (PY789) Filing (using TRM#2)		
2013	October	**EPY6**	Procurement Plan filed with the ICC	Procurement Plan filed with the ICC within 14 days after Comments			
2013	November	**EPY6**		ALJ PO in Procurement Docket historically released around November 20th, BOEs and RBOEs follow.			Draft EPY5 Evaluations
2013	December	**EPY6**	Commission Order in Procurement Docket for PY7	Commission Order in Procurement Docket, within 90 days after IPA files procurement plan with ICC, historically around December 20th			
2014	January	**EPY6**	RFP for 3rd Party Vendors released end January for PY8	RFP for 3rd Party Vendors released end January for PY8	ICC Order in 8-103 Docket within 5 months after the EE plan's submission		
2014	February	**EPY6**			Commission Order in Section 8-103(f) Docket		
2014	March	**EPY6**	3rd Party Vendor Proposals due Mid-March for PY8, (PY9, PY10)	3rd Party Vendor Proposals due Mid-March for PY8, (PY9, PY10)		TRM#3 filed with the ICC by March 1 (effective for EPY7)	
2014	April	**EPY6**					
2014	May	**EPY6**					
2014	June	**EPY7**					
2014	July	**EPY7**	Bids & EE Assessment submitted to IPA for PY8, (PY9, PY10)	Bids & EE Assessment July 15th (or other date determined by ICC or IPA)			
2014	August	**EPY7**	IPA Releases 2015 Draft Procurement Plan Mid August	Draft Procurement Plan August 15th or other date determined by ICC			
2014	September	**EPY7**	Comments on Draft Plan Due	Comments on Draft Plan Due 30 days after Posting Draft Plan (September 15th)			
2014	October	**EPY7**	Procurement Plan filed with the ICC	Procurement Plan filed with the ICC within 14 days after Comments			
2014	November	**EPY7**		ALJ PO in Procurement Docket historically released around November 20th, BOEs and RBOEs follow.			Draft EPY6 Evaluations

Year	Month	EPY	Section 16-111.5B	Section 16-111.5B	Section 8-103 Plan Filing	TRM Update	EM&V
2014	December	**EPY7**	Commission Order in Procurement Docket for PY8	Commission Order in Procurement Docket, within 90 days after IPA files procurement plan with ICC, historically around December 20th			
2015	January	**EPY7**	RFP for 3rd Party Vendors released end January for PY9	RFP for 3rd Party Vendors released end January for PY9			
2015	February	**EPY7**					
2015	March	**EPY7**	3rd Party Vendor Proposals due Mid-March for PY9, (PY10, PY11)	3rd Party Vendor Proposals due Mid-March for PY9, (PY10, PY11)		TRM#4 filed with the ICC by March 1 (effective for EPY8)	
2015	April	**EPY7**					
2015	May	**EPY7**					
2015	June	**EPY8**					
2015	July	**EPY8**	Bids & EE Assessment submitted to IPA for PY9, (PY10, PY11)	Bids & EE Assessment July 15th (or other date determined by ICC or IPA)			
2015	August	**EPY8**	IPA Releases 2016 Draft Procurement Plan Mid August	Draft Procurement Plan August 15th or other date determined by ICC			
2015	September	**EPY8**	Comments on Draft Plan Due	Comments on Draft Plan Due 30 days after Posting Draft Plan (September 15th)			
2015	October	**EPY8**	Procurement Plan filed with the ICC	Procurement Plan filed with the ICC within 14 days after Comments			
2015	November	**EPY8**		ALJ PO in Procurement Docket historically released around November 20th, BOEs and RBOEs follow.			Draft EPY7 Evaluations
2015	December	**EPY8**	Commission Order in Procurement Docket for PY9	Commission Order in Procurement Docket, within 90 days after IPA files procurement plan with ICC, historically around December 20th			
2016	January	**EPY8**	RFP for 3rd Party Vendors released end January for PY10	RFP for 3rd Party Vendors released end January for PY10			
2016	February	**EPY8**					
2016	March	**EPY8**	3rd Party Vendor Proposals due Mid-March for PY10, (PY11, PY12)	3rd Party Vendor Proposals due Mid-March for PY10, (PY11, PY12)		TRM#5 filed with the ICC by March 1 (effective for EPY9)	

Year	Month	EPY	Section 16-111.5B	Section 16-111.5B	Section 8-103 Plan Filing	TRM Update	EM&V
2016	April	**EPY8**					
2016	May	**EPY8**					
2016	June	**EPY9**					
2016	July	**EPY9**	Bids & EE Assessment submitted to IPA for PY10, (PY11, PY12)	Bids & EE Assessment July 15th (or other date determined by ICC or IPA)			
2016	August	**EPY9**	IPA Releases 2017 Draft Procurement Plan Mid August	Draft Procurement Plan August 15th or other date determined by ICC			
2016	September	**EPY9**	Comments on Draft Plan Due	Comments on Draft Plan Due 30 days after Posting Draft Plan (September 15th)	Electric 3-Year Plan (PY10,11,12) Filing (using TRM#5)		
2016	October	**EPY9**	Procurement Plan filed with the ICC	Procurement Plan filed with the ICC within 14 days after Comments			
2016	November	**EPY9**		ALJ PO in Procurement Docket historically released around November 20th, BOEs and RBOEs follow.			Draft EPY8 Evaluations
2016	December	**EPY9**	Commission Order in Procurement Docket for PY10	Commission Order in Procurement Docket, within 90 days after IPA files procurement plan with ICC, historically around December 20th			
2017	January	**EPY9**	RFP for 3rd Party Vendors released end January for PY11	RFP for 3rd Party Vendors released end January for PY11	ICC Order in 8-103 Docket within 5 months after the EE plan's submission		
2017	February	**EPY9**			Commission Order in Section 8-103(f) Docket		
2017	March	**EPY9**	3rd Party Vendor Proposals due Mid-March for PY11, (PY12, PY13)	3rd Party Vendor Proposals due Mid-March for PY11, (PY12, PY13)		TRM#6 filed with the ICC by March 1 (effective for EPY10)	
2017	April	**EPY9**					
2017	May	**EPY9**					
2017	June	**EPY10**					

IV. Appendix C. Statutory Provisions

220 ILCS 5/16-111.5B;

220 ILCS 5/8-103;

220 ILCS 5/8-103A;

20 ILCS 3855/1-10;

220 ILCS 5/16-111.5(e)

http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=022000050HArt%2E+XVI&ActID=1277&ChapterID=23&SeqStart=35800000&SeqEnd=40900000 (Accessed March 22, 2013)

220 ILCS 5/16-111.5B

Sec. 16-111.5B. Provisions relating to energy efficiency procurement.

(a) Beginning in 2012, procurement plans prepared pursuant to Section 16-111.5 of this Act shall be subject to the following additional requirements:

(1) The analysis included pursuant to paragraph (2) of subsection (b) of Section 16-111.5 shall also include the impact of energy efficiency building codes or appliance standards, both current and projected.

(2) The procurement plan components described in subsection (b) of Section 16-111.5 shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures.

(3) In addition to the information provided pursuant to paragraph (1) of subsection (d) of Section 16-111.5 of this Act, each Illinois utility procuring power pursuant to that Section shall annually provide to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency, an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. The assessment shall include the following:

(A) A comprehensive energy efficiency potential study for the utility's service territory that was

completed within the past 3 years.
(B) Beginning in 2014, the most recent analysis submitted pursuant to Section 8-103A of this Act and approved by the Commission under subsection (f) of Section 8-103 of this Act.
(C) Identification of new or expanded cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103 of this Act and that would be offered to all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility.
(D) Analysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service.
(E) Analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply.
(F) An energy savings goal, expressed in megawatt-hours, for the year in which the measures will be implemented.
(G) For each expanded or new program, the estimated amount that the program may reduce the agency's need to procure supply.
In preparing such assessments, a utility shall conduct an annual solicitation process for purposes of requesting proposals from third-party vendors, the results of which shall be provided to the Agency as part of the assessment, including documentation of all bids received. The utility shall develop requests for proposals consistent with the manner in which it develops requests for proposals under plans approved pursuant to Section 8-103 of this Act, which considers input from the Agency and interested stakeholders.
(4) The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of

subsection (d) of Section 16-111.5 of this Act energy efficiency programs and measures it determines are cost-effective and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a).

(5) Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

(6) An electric utility shall recover its costs incurred under this Section related to the implementation of energy efficiency programs and measures approved by the Commission in its order approving the procurement plan under Section 16-111.5 of this Act, including, but not limited to, all costs associated with complying with this Section and all start-up and administrative costs and the costs for any evaluation, measurement, and verification of the measures, from all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act, provided, however, that the limitations described in subsection (d) of that Section shall not apply to the

costs incurred pursuant to this Section or Section 16-111.7 of this Act.
(b) For purposes of this Section, the term "energy efficiency" shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act.
(Source: P.A. 97-616, eff. 10-26-11; 97-824, eff. 7-18-12.)

http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=022000050HArt%2E+VIII&ActID=1277&ChapterID=23&SeqStart=9900000&SeqEnd=14800000 (Accessed March 22, 2013)

220 ILCS 5/8-103

Sec. 8-103. Energy efficiency and demand-response measures.
(a) It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures. As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test. The low-income measures described in subsection (f)(4) of this Section shall not be required to meet the total resource cost test. For purposes of this Section, the terms "energy-efficiency", "demand-response", "electric utility", and "total resource cost test" shall have the meanings set forth in the Illinois Power Agency Act. For purposes of this Section, the amount per kilowatthour means the total amount paid for electric service expressed on a per kilowatthour basis. For purposes of this Section, the total amount paid for electric service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on-taxes.
(b) Electric utilities shall implement cost-effective energy efficiency measures to meet the following incremental annual energy savings goals:
(1) 0.2% of energy delivered in the year commencing June 1, 2008;
(2) 0.4% of energy delivered in the year commencing June 1, 2009;
(3) 0.6% of energy delivered in the year commencing

June 1, 2010;
(4) 0.8% of energy delivered in the year commencing June 1, 2011;
(5) 1% of energy delivered in the year commencing June 1, 2012;
(6) 1.4% of energy delivered in the year commencing June 1, 2013;
(7) 1.8% of energy delivered in the year commencing June 1, 2014; and
(8) 2% of energy delivered in the year commencing June 1, 2015 and each year thereafter.
(c) Electric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act, and for customers that elect hourly service from the utility pursuant to Section 16-107 of this Act, provided those customers have not been declared competitive. This requirement commences June 1, 2008 and continues for 10 years.
(d) Notwithstanding the requirements of subsections (b) and (c) of this Section, an electric utility shall reduce the amount of energy efficiency and demand-response measures implemented in any single year by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to:
(1) in 2008, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;
(2) in 2009, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;
(3) in 2010, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007;
(4) in 2011, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2010 or 2% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; and
(5) thereafter, the amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011.

No later than June 30, 2011, the Commission shall review the limitation on the amount of energy efficiency and demand-response measures implemented pursuant to this Section and report to the General Assembly its findings as to whether that limitation unduly constrains the procurement of energy efficiency and demand-response measures.

(e) Electric utilities shall be responsible for overseeing the design, development, and filing of energy efficiency and demand-response plans with the Commission. Electric utilities shall implement 100% of the demand-response measures in the plans. Electric utilities shall implement 75% of the energy efficiency measures approved by the Commission, and may, as part of that implementation, outsource various aspects of program development and implementation. The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the Department of Commerce and Economic Opportunity, and must be designed in conjunction with the utility and the filing process. The Department may outsource development and implementation of energy efficiency measures. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures.

The apportionment of the dollars to cover the costs to implement the Department's share of the portfolio of energy efficiency measures shall be made to the Department once the Department has executed rebate agreements, grants, or contracts for energy efficiency measures and provided supporting documentation for those rebate agreements, grants, and contracts to the utility. The Department is authorized to adopt any rules necessary and prescribe procedures in order to ensure compliance by applicants in carrying out the purposes of rebate agreements for energy efficiency measures implemented by the Department made under this Section.

The details of the measures implemented by the Department shall be submitted by the Department to the Commission in connection with the utility's filing regarding the energy efficiency and demand-response measures that the utility implements.

A utility providing approved energy efficiency and demand-response measures in the State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission. The tariff shall be established outside the context of a general rate case. Each year the Commission shall initiate a review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures.

Each utility shall include, in its recovery of costs, the costs estimated for both the utility's and the Department's

implementation of energy efficiency and demand-response measures. Costs collected by the utility for measures implemented by the Department shall be submitted to the Department pursuant to Section 605-323 of the Civil Administrative Code of Illinois, shall be deposited into the Energy Efficiency Portfolio Standards Fund, and shall be used by the Department solely for the purpose of implementing these measures. A utility shall not be required to advance any moneys to the Department but only to forward such funds as it has collected. The Department shall report to the Commission on an annual basis regarding the costs actually incurred by the Department in the implementation of the measures. Any changes to the costs of energy efficiency measures as a result of plan modifications shall be appropriately reflected in amounts recovered by the utility and turned over to the Department. The portfolio of measures, administered by both the utilities and the Department, shall, in combination, be designed to achieve the annual savings targets described in subsections (b) and (c) of this Section, as modified by subsection (d) of this Section.

The utility and the Department shall agree upon a reasonable portfolio of measures and determine the measurable corresponding percentage of the savings goals associated with measures implemented by the utility or Department.

No utility shall be assessed a penalty under subsection (f) of this Section for failure to make a timely filing if that failure is the result of a lack of agreement with the Department with respect to the allocation of responsibilities or related costs or target assignments. In that case, the Department and the utility shall file their respective plans with the Commission and the Commission shall determine an appropriate division of measures and programs that meets the requirements of this Section.

If the Department is unable to meet incremental annual performance goals for the portion of the portfolio implemented by the Department, then the utility and the Department shall jointly submit a modified filing to the Commission explaining the performance shortfall and recommending an appropriate course going forward, including any program modifications that may be appropriate in light of the evaluations conducted under item (7) of subsection (f) of this Section. In this case, the utility obligation to collect the Department's costs and turn over those funds to the Department under this subsection (e) shall continue only if the Commission approves the modifications to the plan proposed by the Department.

(f) No later than November 15, 2007, each electric utility shall file an energy efficiency and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2008 through 2010. No later than October 1, 2010, each electric utility shall file an energy efficiency

and demand-response plan with the Commission to meet the energy efficiency and demand-response standards for 2011 through 2013. Every 3 years thereafter, each electric utility shall file, no later than September 1, an energy efficiency and demand-response plan with the Commission. If a utility does not file such a plan by September 1 of an applicable year, it shall face a penalty of $100,000 per day until the plan is filed. Each utility's plan shall set forth the utility's proposals to meet the utility's portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e), taking into account the unique circumstances of the utility's service territory. The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 5 months after its submission. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures. Penalties shall be deposited into the Energy Efficiency Trust Fund. In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:

(1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).

(2) Present specific proposals to implement new building and appliance standards that have been placed into effect.

(3) Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).

(4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income.

(5) Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs

covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.

(6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.

(7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year.

(g) No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices.

(h) This Section does not apply to an electric utility that on December 31, 2005 provided electric service to fewer than 100,000 customers in Illinois.

(i) If, after 2 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be $1,000,000, which shall be assessed as follows: a large electric utility shall pay $665,000, and a medium electric utility shall pay $335,000. If, after 3 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program. The combined total liability for failure to meet the goal shall be $1,000,000, which shall be assessed as follows: a large electric utility shall pay $665,000, and a medium electric utility shall pay $335,000. In addition, the responsibility for implementing the energy efficiency measures of the utility making the payment shall be transferred to the Illinois Power Agency if, after 3 years, or in any subsequent 3-year period, the utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e). The Agency shall implement a competitive procurement program to procure resources necessary to meet the standards specified in this Section as modified by subsections (d) and (e), with costs for those resources to be recovered in the same manner as products purchased through the procurement plan as provided in Section 16-111.5. The Director shall implement this requirement in connection with the procurement plan as provided in Section

16-111.5.
For purposes of this Section, (i) a "large electric utility" is an electric utility that, on December 31, 2005, served more than 2,000,000 electric customers in Illinois; (ii) a "medium electric utility" is an electric utility that, on December 31, 2005, served 2,000,000 or fewer but more than 100,000 electric customers in Illinois; and (iii) Illinois electric utilities that are affiliated by virtue of a common parent company are considered a single electric utility.
(j) If, after 3 years, or any subsequent 3-year period, the Department fails to implement the Department's share of energy efficiency measures required by the standards in subsection (b), then the Illinois Power Agency may assume responsibility for and control of the Department's share of the required energy efficiency measures. The Agency shall implement a competitive procurement program to procure resources necessary to meet the standards specified in this Section, with the costs of these resources to be recovered in the same manner as provided for the Department in this Section.
(k) No electric utility shall be deemed to have failed to meet the energy efficiency standards to the extent any such failure is due to a failure of the Department or the Agency.
(Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10; 97-616, eff. 10-26-11; 97-841, eff. 7-20-12.)

220 ILCS 5/8-103A

Sec. 8-103A. Energy efficiency analysis. Beginning in 2013, an electric utility subject to the requirements of Section 8-103 of this Act shall include in its energy efficiency and demand-response plan submitted pursuant to subsection (f) of Section 8-103 an analysis of additional cost-effective energy efficiency measures that could be implemented, by customer class, absent the limitations set forth in subsection (d) of Section 8-103. In seeking public comment on the electric utility's plan pursuant to subsection (f) of Section 8-103, the Commission shall include, beginning in 2013, the assessment of additional cost-effective energy efficiency measures submitted pursuant to this Section. For purposes of this Section, the term "energy efficiency" shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act.
(Source: P.A. 97-616, eff. 10-26-11.)

http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2934&ChapterID=5 (Accessed March 22, 2013)

20 ILCS 3855/1-10

Sec. 1-10. Definitions.

"Energy efficiency" means measures that reduce the amount of electricity or natural gas required to achieve a given end use.

"Total resource cost test" or "TRC test" means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

(Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10; 97-96, eff. 7-13-11; 97-239, eff. 8-2-11; 97-491, eff. 8-22-11; 97-616, eff. 10-26-11; 97-813, eff. 7-13-12.)

http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=022000050K16-111.5 (Accessed May 15, 2013)

(220 ILCS 5/16-111.5)
Sec. 16-111.5. Provisions relating to procurement.

220 ILCS 5/16-111.5(d)

(d) Except as provided in subsection (j), the planning process shall be conducted as follows:
(1) Beginning in 2008, each Illinois utility procuring power pursuant to this Section shall annually provide a range of load forecasts to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency. The load forecasts shall cover the 5-year procurement planning period for the next procurement plan and shall include hourly data representing a high-load, low-load and expected-load scenario for the load of the eligible retail customers. The utility shall provide supporting data and assumptions for each of the scenarios.
(2) Beginning in 2008, the Illinois Power Agency shall prepare a procurement plan by August 15th of each year, or such other date as may be required by the Commission. The procurement plan shall identify the portfolio of demand-response and power and energy products to be procured. Cost-effective demand-response measures shall be procured as set forth in item (iii) of subsection (b) of this Section. Copies of the procurement plan shall be posted and made publicly available on the Agency's and Commission's websites, and copies shall also be provided to each affected electric utility. An affected utility shall have 30 days following the date of posting to provide comment to the Agency on the procurement plan. Other interested entities also may comment on the procurement plan. All comments submitted to the Agency shall be specific, supported by data or other detailed analyses, and, if objecting to all or a portion of the procurement plan, accompanied by specific alternative wording or proposals. All comments shall be posted on the Agency's and Commission's websites. During this 30-day comment period, the Agency shall hold at least one public hearing within each utility's service area for the purpose of receiving public comment on the procurement plan. Within 14 days following the end of the 30-day review period, the Agency shall revise the procurement plan as necessary based on the comments received and file the procurement plan with the Commission and post the procurement plan on the websites.
(3) Within 5 days after the filing of the procurement plan, any person objecting to the procurement plan shall file an objection with the Commission. Within 10 days after the filing, the Commission shall determine whether a hearing is necessary.

The Commission shall enter its order confirming or modifying the procurement plan within 90 days after the filing of the procurement plan by the Illinois Power Agency.
(4) The Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

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(e) The procurement process shall include each of the following components:
(1) Solicitation, pre-qualification, and registration of bidders. The procurement administrator shall disseminate information to potential bidders to promote a procurement event, notify potential bidders that the procurement administrator may enter into a post-bid price negotiation with bidders that meet the applicable benchmarks, provide supply requirements, and otherwise explain the competitive procurement process. In addition to such other publication as the procurement administrator determines is appropriate, this information shall be posted on the Illinois Power Agency's and the Commission's websites. The procurement administrator shall also administer the prequalification process, including evaluation of credit worthiness, compliance with procurement rules, and agreement to the standard form contract developed pursuant to paragraph (2) of this subsection (e). The procurement administrator shall then identify and register bidders to participate in the procurement event.
(2) Standard contract forms and credit terms and instruments. The procurement administrator, in consultation with the utilities, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard contract forms for the supplier contracts that meet generally accepted industry practices. Standard credit terms and instruments that meet generally accepted industry practices shall be similarly developed. The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the procurement administrator cannot reach agreement with the applicable electric utility as to the contract terms and conditions, the procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. The terms of the

contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.

(3) Establishment of a market-based price benchmark. As part of the development of the procurement process, the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor, shall establish benchmarks for evaluating the final prices in the contracts for each of the products that will be procured through the procurement process. The benchmarks shall be based on price data for similar products for the same delivery period and same delivery hub, or other delivery hubs after adjusting for that difference. The price benchmarks may also be adjusted to take into account differences between the information reflected in the underlying data sources and the specific products and procurement process being used to procure power for the Illinois utilities. The benchmarks shall be confidential but shall be provided to, and will be subject to Commission review and approval, prior to a procurement event.

(4) Request for proposals competitive procurement process. The procurement administrator shall design and issue a request for proposals to supply electricity in accordance with each utility's procurement plan, as approved by the Commission. The request for proposals shall set forth a procedure for sealed, binding commitment bidding with pay-as-bid settlement, and provision for selection of bids on the basis of price.

(5) A plan for implementing contingencies in the event of supplier default or failure of the procurement process to fully meet the expected load requirement due to insufficient supplier participation, Commission rejection of results, or any other cause.

(i) Event of supplier default: In the event of supplier default, the utility shall review the contract of the defaulting supplier to determine if the amount of supply is 200 megawatts or greater, and if there are more than 60 days remaining of the contract term. If both of these conditions are met, and the default results in termination of the contract, the utility shall immediately notify the Illinois Power Agency that a request for proposals must be issued to procure replacement power, and the procurement administrator shall run an additional procurement event. If the contracted supply of the defaulting supplier is less than 200 megawatts or there are less than 60 days remaining of the contract term, the utility shall procure power and energy from the applicable regional transmission organization market, including ancillary services, capacity, and day-ahead or real time energy, or both, for the duration of the contract term to replace the contracted supply; provided, however, that if a needed product is not available through the regional transmission organization market it shall

be purchased from the wholesale market.
(ii) Failure of the procurement process to fully meet the expected load requirement: If the procurement process fails to fully meet the expected load requirement due to insufficient supplier participation or due to a Commission rejection of the procurement results, the procurement administrator, the procurement monitor, and the Commission staff shall meet within 10 days to analyze potential causes of low supplier interest or causes for the Commission decision. If changes are identified that would likely result in increased supplier participation, or that would address concerns causing the Commission to reject the results of the prior procurement event, the procurement administrator may implement those changes and rerun the request for proposals process according to a schedule determined by those parties and consistent with Section 1-75 of the Illinois Power Agency Act and this subsection. In any event, a new request for proposals process shall be implemented by the procurement administrator within 90 days after the determination that the procurement process has failed to fully meet the expected load requirement.
(iii) In all cases where there is insufficient supply provided under contracts awarded through the procurement process to fully meet the electric utility's load requirement, the utility shall meet the load requirement by procuring power and energy from the applicable regional transmission organization market, including ancillary services, capacity, and day-ahead or real time energy or both; provided, however, that if a needed product is not available through the regional transmission organization market it shall be purchased from the wholesale market.
(6) The procurement process described in this subsection is exempt from the requirements of the Illinois Procurement Code, pursuant to Section 20-10 of that Code.